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Canada: Parliament, House of Commons  
Select Committee on the Boundaries

# REPORT

OF THE

(9)

## SELECT COMMITTEE

ON THE

## BOUNDARIES

BETWEEN THE

## PROVINCE OF ONTARIO

AND THE

## UNORGANIZED TERRITORIES OF THE DOMINION

WITH

## APPENDIX.

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Printed by Order of Parliament.

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REPORT  
OF THE  
SELECT COMMITTEE  
ON THE  
BOUNDARIES

BETWEEN THE PROVINCE OF ONTARIO AND THE UNORGANIZED  
TERRITORIES OF THE DOMINION,

WITH APPENDIX.

---

ORDER OF REFERENCE.

HOUSE OF COMMONS,  
THURSDAY, 19th Feb., 1880.

*Resolved*,—That a Select Committee, mposed of

Mr. Dawson,  
" Robinson,  
" Geoffrion,  
" DeCosmos,  
" Brecken,  
" Royal,  
" Trow,  
" Mousseau,  
" Caron,  
" McDonald (Cape Breton), and  
" Weldon,

be appointed to enquire into, and report to this House upon all matters connected with the boundaries between the Province of Ontario and the unorganized territories of the Dominion, with power to send for persons and papers, and that the quorum of the said Committee do consist of five members.

Attest.

A. PATRICK,  
*Clerk of the House.*

---

MONDAY, 1st March, 1880.

*Ordered*, That the said Committee have leave to employ a short-hand writer to take evidence before said Committee.

Attest.

A. PATRICK,  
*Clerk of the House.*

---

WEDNESDAY, 10th March, 1880.

*Ordered*, That Messrs. Ross (Middlesex) and Ouimet be added to the said Committee.

Attest.

A. PATRICK,  
*Clerk of the House.*

## REPORT.

The Select Committee appointed by your Honorable House to enquire into all matters connected with the Boundaries between the Province of Ontario and the unorganized Territories of the Dominion, beg leave to submit as their

### FIRST REPORT.

That in as far as their other Parliamentary duties would permit they have carefully investigated the matters referred to them, and, notwithstanding that the subject is a very wide one, requiring much historical research and consideration, they believe that the documents which they herewith submit, together with the evidence which they have been able to obtain, will serve to convey to your Honorable House a large amount of valuable information not hitherto brought to general notice.

In the matter of evidence, your Committee only called on those who, from their previous experience and known acquaintance with the subject, were the most likely to give useful information, and it will be seen that, by means of interrogatories put to the witnesses, the question has been sifted from almost every possible point of view, and opinions obtained which, coming as they do from eminent Judges of the higher courts, from professional experts in matters of territorial boundaries and counsel learned in the law, will, your Committee feel assured, command attention.

The following were the witnesses examined, namely:—

1. Lieut.-Col. J. S. Dennis, Deputy Minister of the Interior, formerly Surveyor-General.
2. Mr. Lindsay Russell, Surveyor-General.
3. Hon. David Mills, M.P.
4. Hon. D. A. Smith, M.P., formerly Governor of the Honorable Hudson's Bay Company's Territories.
5. Professor Robert Bell, of the Geological Survey.
6. Hon. F. G. Johnson, Judge of the Superior Court of Quebec, at one time Recorder of Rupert's Land and Governor of Assiniboia.
7. Thomas Hodgins, Q.C., Counsel for Ontario.
8. Hon. T. K. Ramsay, Judge of the Court of Queen's Bench, Quebec.
9. Hon. J. D. Armour, Judge of the Court of Queen's Bench, Ontario.
10. Mr. W. Murdoch, Civil Engineer.
11. Mr. P. L. Morin, of the Crown Lands Department, Quebec.
12. Hon. William McDougall, C.B.
13. Mr. William McD. Dawson, of Three Rivers, formerly Superintendent Woods and Forests, for the United Provinces.

In considering this question it is necessary to have in view the Act, 14 Geo. 3rd, cap. 83, commonly known as the Quebec Act, 1774\*; the Act 31 Geo. 3rd, cap. 31, called the Constitutional Act, 1791†; the Act 43 Geo. 3rd, cap. 138, for extending the jurisdiction of the Canadian Courts to the Indian Territories (see appendix), together with other Acts and commissions, treaties and instructions to Governors, which will be found in sequence according to date from pp. 13 to 27 of the evidence, or in the appendix.

On reference to the evidence, it will be seen that, as regards the western and northern boundaries of Ontario, Judge Ramsay of the Quebec Court of Queen's

\* Page 15 of Evidence. † Page 18 of Evidence.



Bench, and Judge Johnson of the Superior Court of Quebec, hold that the prolongation of a line drawn due north from the point of junction of the Ohio and Mississippi forms the western limitary line, and the Height of Land or the St. Lawrence water-shed, the northern boundary. Judge Armour inclines to the belief that the Height of Land forms both the western and northern boundaries, but says in reference to the decision of the Court of King's Bench in the de Reinhardt case, "no doubt about it, it is a clear decision, and were I deciding it judicially, I would be bound to follow that decision."

The decision to which he refers is in the following words :

FRIDAY, 29TH MAY, 1818.

"Chief Justice Sewell.—The Court are most distinctly of opinion, on referring both to the Act of 1791 and that of 1774, that the argument on the defence must fail. What was the object of each Act? Amongst others, that of 1774 was to enlarge the Province of Quebec, which had been created in 1763. That of 1791 was to separate or divide the Province of Quebec into two Provinces, to be denominated Upper and Lower Canada, and make each respectively independent of the other by giving a Legislature to each respectively, but still retaining between or within the two Provinces, the same extent of country, the same space as the one Province contained. What is the Act? What is its object, its avowed object? To repeal certain parts of the Act of 1774; and what is the part repealed? It is that part of it which gives authority to the Council of the Province of Quebec; and what is the reason assigned for so doing? Why, that His Majesty had signified it to be his royal will and pleasure to divide his Province of Quebec. To assert that he intended by this that the limits of the Province should be extended by the separation appears to me repugnant to the plainest principles of common sense, and therefore I cannot assent to it. The short history of the Act of 1791 is briefly this: The King signifies to Parliament his royal intention of dividing his Province of Quebec, and he calls on the Legislature to provide for this alteration by granting an Act adapted to the change. The Legislature pass an Act providing for the due government of the two Provinces, and under the authority of this Act, and the Royal Proclamation, the Province of Quebec was accordingly divided, the Royal Proclamation being an exercise of sovereign authority. His Majesty in that Act, by and with the consent of his Privy Council, declared what should be the line of separation between Upper and Lower Canada, and how much of the former Province of Quebec shall belong to the one, and how much to the other. The object of the Act and the object of the Royal Proclamation are so clearly expressed that we cannot for a moment doubt upon the subject. What says the Act? His Majesty having been pleased to signify his royal will and pleasure to separate and divide the Province of Quebec.' What says the Proclamation? Why, the very same words. To divide the Province of Quebec, not to add to it, any more than to take away from it. Therefore, Upper Canada, in the purview, could include only that part of the Province so divided as was not contained in Lower Canada; but it could not extend beyond these limits which constituted the Province of Quebec, otherwise it would certainly have been an Act to enlarge, rather than an Act to divide. In delivering this opinion I am speaking our unanimous sentiment, for we have consulted our brother Perrault upon the subject and he clearly concurs with us. According to our understanding of the Act and the Royal Proclamation, we are bound to say that we consider the argument of the gentlemen concerned for the prisoner, though presented with great ability and ingenuity, must fail, because the western boundary of the Province of Upper Canada is 'a line drawn due north from the confluence of the Ohio and Mississippi Rivers till it strikes the boundary territory line of Hudson's Bay.'

"The question of *fact* will remain with the Jury. It is they who are to say, whether this place, *the Dalles* IS OR IS NOT to the west of the line which we now declare to be the western boundary of His Majesty's Province of Upper Canada. If they are of opinion that it is within, or to the east of this western line, then it is in the Province of Upper Canada and not within our jurisdiction; but, if they are of opinion

"that it is to the west of this line, then, I am giving you our *unanimous* opinion when I declare that *the Dalles are in the Indian Territory, and not within the limits of the Province of Upper or Lower Canada*, but clearly within the jurisdiction of this Court, by the Act of the 43rd of the King, chapter 138, which extends our power to 'the trial and punishment of persons guilty of offences within certain parts of North America.' "

Among the witnesses examined were Lient.-Col. Dennis, Deputy Minister of the Interior, formerly Surveyor-General, and Mr. Russell, the present Surveyor-General of Dominion Lands, whose opinions, as experts in dealing with matters of territorial boundaries, the Committee considered it desirable to have. Col. Dennis handed in an elaborate paper, which will be found with his evidence annexed, in which he argues that the western boundary of Ontario is the prolongation of a line drawn due north from the junction of the Ohio and Mississippi, and that the height of land forms the northern boundary.

Surveyor-General Russell gave the following evidence:

*By the Chairman :*

"17. Having regard to the Act of 1774, commonly known as the Quebec Act, and looking at the different rivers and boundary lines as set down on the map recently issued by the Government of Ontario, entitled "Map of part of North America, designed to illustrate the official reports and discussions relating to the boundaries of the Province of Ontario," where would you consider the western boundary of the Province of Quebec, as constituted by that Act, to have been?

"In interpreting the clause of the Quebec Act, which describes the boundary, I consider that there are two points of view from which the subject may be treated: first, what the describer intended to do; second, what he has actually done.

"From the limited number of possibilities in this case, to select that intention which is most probable, is a matter of judgment; what has been done in the description is a matter of fact.

"The effect of the description is to make the western boundary of Ontario a line due north from the confluence of the Ohio and Mississippi Rivers.

"The word "northward," though seemingly lacking in precision, is not really indefinite, and admits of no choice in its interpretation; for corresponding to the assumption of any direction to one side of north, there is an equal and opposite possibility on the other side thereof, and the two are mutually destructive. Therefore, by exhaustive process, "northward," taken by itself, that is, without other conditioning or qualifying word or phrase, can mean nothing else than *north*. In the description under consideration, it stands unconditioned and unqualified.

"If I were asked my opinion as to the intention of the describer, to affirm what he intended to do, not what he has done, I should still say that he meant due *north*.

"When it is question of his intent, I consider that, in endeavoring to interpret any certain word or expression used by him, due regard should be had to his own phraseology and use of words in the rest of the description; further, to the greater or less precision of thought, indicated throughout in his dealing with the various circumstances and conditions of the boundary described.

"Had it been his intention to define the boundary as extending northward along the banks of the Mississippi, that idea, I have no doubt, would have been clearly conveyed, for, in the several instances occurring previously in the description, where the same condition had to be expressed, there is no mistiness of definition. For example he uses the words "thence along the eastern and south-eastern boundary of Lake Erie." Again, the words, "following the same bank;" further on, immediately before using the word "northward," on the application of which so much turns, he employs, when speaking of the Ohio, the expression, "along the bank of the said river, westward;" this last affirmation being one to express a similar condition, with but a difference of direction, to that which would have obtained had he intended to say, "along the bank of the Mississippi northward."

"That he should in one sentence so clearly state the special condition under which the boundary was to go "*westward*," and in the very next sentence, while intending



"to define an equally restrictive and equally important similar condition, should omit  
 "to use the least word or phrase to specify *how* the same boundary was to proceed  
 "'northward,' I cannot conceive. I am therefore obliged to hold that by northward he  
 "meant north.

"18. Mr. *Trow* asked whether the word "northward" might not be held to apply  
 "to the extension generally of the territory in a northerly direction from its southern  
 "boundary, throughout its entire length in an eastern and western direction?—Such a  
 "word can be correctly used in surveying or geographical description, to imply the  
 "general extension in area, in any given direction from any given limit or boundary,  
 "all along such boundary, but in the case in point, the difficulty would still remain as  
 "to what should constitute the western limit of such general northerly extension.

"19. Mr. *De Cosmos* asked—Am I to understand that you consider the boundary  
 "laid down on this map (pointing to a certain line on the map of the Province of  
 "Ontario on the table) the western boundary of Ontario?—I do, if that line is correctly  
 "drawn as the direct prolongation of a line due north from the confluence of the Ohio  
 "and Mississippi Rivers."

Another expert, Mr. Wm. Murdoch, Civil Engineer, was examined and he gave evidence to the same purport as that of Col. Dennis and Mr. Russell. (page 144). He handed in a document shewing that the Anglican Bishops of Rupert's Land have, since 1845, held letters patent, from the Queen, appointing them to the See of Rupert's Land, the southern territorial boundary of which was, in their view, the Height of Land, up to which limit they exercised ecclesiastical jurisdiction.

Mr. Murdoch also submitted a Proclamation issued by Sir John Coape Sherbrooke in 1816, which was given to him by an Indian Chief who had preserved it carefully.

This Proclamation was issued under the authority of the Act 43 Geo. III, cap. 138, for extending the jurisdiction of the courts of justice in the Provinces of Lower and Upper Canada to the Indian Territories.

And it is of value as shewing that the country to the west of the St. Lawrence water shed, where a sort of private war was then in progress between the adherents of the North-West Company and the Hudson Bay Company's employees, was at that time treated as Indian territory. The Hon. Donald A. Smith, formerly Governor of the Hon. Hudson Bay Company's territories, testified that the Height of Land or St. Lawrence water-shed was the southern boundary of the territories granted by King Charles II, in 1670, to the merchant adventurers of England trading into Hudson's Bay, and he handed in a copy of the Royal Grant, together with the opinions of eminent counsel, both of the past century and the present, as to the validity of the charter and the territories which it covered, all of which will be found with his evidence.

Both Mr. Smith and Judge Johnson gave important evidence in respect to the colony of Assiniboia, which will be noticed further on.

Mr. McMahon, Q.C., who at one time acted as counsel for the Dominion, was not examined because his engagements in important cases before the courts would not admit of his attendance, but his statement of the case and his argument will be found in the Appendix. In these documents he holds that the due north line already referred to, forms the western boundary of Ontario, and the Height of Land the northern boundary.

The Hon. David Mills, M.P., in the concluding paragraph of his work to which he has referred the Committee, defines the boundaries of Ontario as follows:—

"The limits of the Province of Ontario, then, are the International Boundary  
 "upon the south, westward to the Rocky Mountains; the Rocky Mountains from the  
 "International Boundary northward to the most north-westerly sources of the Saskat-  
 "chewan; the northern water-shed of the Saskatchewan eastward until it intersects the  
 "boundary line midway between Lake Winnipeg and Port Nelson, at the mouth of  
 "Nelson River; and upon the north-east, the line already indicated drawn midway  
 "between the posts held by England and France just before Canada was ceded to



"Great Britain." His views on the different points of controversy are fully explained in the volumes published under the authority of the Government of Ontario.

Mr. William McD. Dawson, who was the first to investigate the case on the part of Canada, in 1837, than whom no one should have a more thorough knowledge of the subject, expressed himself as follows:—

*By Mr. Mousseau :*

"Q. Have you examined the boundary prescribed by the Arbitrators appointed by the Dominion and the Province of Ontario, and can you state upon what ground of history or fact it rests, or can be maintained?—With all possible respect for the Arbitrators, two of whom I have known well and esteemed highly, and the other of whom, occupying a diplomatic position that commands the confidence and respect of two great nations, is entitled to the highest consideration, I must nevertheless candidly say, that their decision has no basis whatever of history or fact to sustain it. If the Arbitrators conceived that they were to make a boundary, it was, of course, a matter of opinion as to where it would be suitable to place it, in which they would be right to exercise their own judgment and views of expediency; but if they had merely to examine and declare where the boundary was, or where it had ever been, they have adopted that which was not a possible one. They had, I think, one of three things open to them to declare. 1st. That Ontario embraced the whole North-West Territory under the Proclamation of 1791, which I have just dismissed as untenable. 2nd. That it was bounded by the line prescribed by the Quebec Act in 1774; or 3rd. That a more recent definition, which they seem to have intended to adopt in part, should prevail. The boundary they have adopted was not a possible one under any circumstances.

"As to the first, apart from the untenable character of any proposition based upon the Proclamation of 1791, with the analysis I have just given of its contents, I think that Ontario practically entered Confederation without it, as well as that Confederation would have been practically impossible with it, as the smaller Provinces would not have consented to stand like pigmies beneath the shadow of a colossus; assuredly, objection would have been taken by Lower Canada, already stripped by the division of the Province in 1791 of the just inheritance of her people (jointly considered as regards both races), and a new Province established in the very garden of the then available country, whose people, rapidly accumulating the wealth that soil and climate poured for them into the lap of plenty, have been sometimes but too ready to decry the less rapid advance of those whose lot has been cast in the more sterile regions of the north; and finally, if Ontario even had any such colorable claim, she abandoned it when a majority of her representatives voted for the erection of the Province of Manitoba.

"As to the 2nd, had the British North America Act declared that the Province of Ontario should consist of Upper Canada as it had existed for 47 years, from 1791 till 1838, instead of as it existed at the passing of that Act, it would very clearly have embraced all that it had originally possessed as the western division of the former Province of Quebec; but its description having been changed by competent authority at the last named date, it ceased to have the same boundaries as before and entered Confederation as it then existed.

"On the 3rd alternative, therefore, that was open to the Arbitrators, and which they seem to have intended to, and did, in part, adopt, I would observe:—that, for a consecutive period of 47 years, in every document issued by competent authority, after describing the divisional line drawn due north from the head of Lake Temiscaming "to the boundary line of Hudson's Bay," the Province of Upper Canada was declared in the most brief and intelligible language as simply "to comprehend all such lands, territories and islands lying to the westward of the said line of division as were part of our Province of Quebec." Its boundary on the north, therefore, was the 'boundary line of Hudson's Bay,' which, by the statute which gave a limit to its boundary in that direction, necessarily, was the southern boundary of the Hudson's Bay Company's territories, wherever that might be found. It was positively

"restricted by statute from going further. Its westerly extension has already been fully dealt with.

"In 1838, however, the description was entirely remodelled, all reference to what it had been as a division of the former Province of Quebec expunged, a new description formulated and a new, distinct and, in some respect, entirely different boundary given to Upper Canada by competent authority, as embodied in the commission to Lord Durham, and continued in every succeeding description thereafter.

"By this new boundary the Province of Upper Canada was extended on the north to the 'shore' of Hudson's Bay, and curtailed on the west to the entrance "into Lake Superior."

"I observe that it has been contended that "the boundary line of Hudson's Bay" and "the shore of Hudson's Bay" were convertible terms and meant one and the same thing. I cannot admit this; the law does not admit it, for it has declared that "a territory granted to the Hudson's Bay Company existed, and if it existed it had to be found somewhere between its southern boundary and the shore of Hudson's Bay, and its southern boundary being, by statute law, the northern boundary of the Province of Upper Canada, it could not be identical with the shore of Hudson's Bay.

"The question then arises, had the Crown the prerogative right to extend the boundary of Upper Canada to the north beyond that provided by statute, and if so did that right include the power to extend it over any part of the Hudson's Bay Company's territories? On this point, it may be observed that the Hudson's Bay Company's territories had already been put by law (Act of 1821) very effectually under the Government of Upper as well as Lower Canada—reserving whatever peculiar rights may have appertained to them under their charter. The Hudson's Bay Company were a trading concern, having certain rights, but they were not a government—notwithstanding that they made some efforts in that direction, and, I see nothing in the law, as it then stood, to render it incompatible for the Royal prerogative to have extended the limits of Upper or of Lower Canada over these territories, reserving the rights of the Company as the law already did.

"This seems to have been the view taken by the Arbitrators, for they commence their description *at the shore of Hudson's Bay*, where an extension of the due north line from the head of Lake Temiscaming would reach it.

"It would not, however, appear to be the view taken by the Department of the Interior, if I may judge by the Dominion maps issued since the siring of the Arbitrators, for these maps carry the boundary of Ontario to the *shore of Hudson's Bay*, as if the Arbitrators had made a boundary there, but do not carry the contiguous boundary of Quebec to the same point, but indicate it as extending only to what may have been considered 'the boundary line of Hudson's Bay.' The Department must necessarily be in error in this, for the Arbitrators have not made or declared a boundary for Ontario between these points. They have assumed it as existing by commencing *at the shore of Hudson's Bay*, but if the Department is right there is a hiatus and no legal boundary whatever provided for Ontario in the large gap between the point where the boundary of Quebec is made to terminate and the point where the Arbitrators commence their description, for if they were right in commencing there, Quebec also extends contiguously to the same point, as the same extension of Lower Canada to the north was made in 1838 as of Upper Canada, in a separate and distinct description.

"I think, therefore, that in commencing their description at the shore of Hudson's Bay, the Arbitrators were correct, and that the Crown had the prerogative right to extend the boundary to that point, just as the first Province of Quebec was created in 1773; and as the extended Province of Quebec *might have been* further added to by Proclamation in 1791, had it been so done by proper authorization, and conveyed in intelligible language, which it was not.

"I now come to the other point, *the curtailment of the Province on the West* by the same instrument the Arbitrators have recognized as *extending it on the North*.

"By that instrument it will be seen that all reference to the former Province of Quebec, to be found in every descriptive act of authority for the preceding 47 years,



"is entirely dropped, and a new description, complete within itself, formulated, not resting upon any previous law, proclamation or order. From that date the Province of Upper Canada no longer subsisted as a divisional part of the old Province of Quebec; it subsisted from that date independently, on the merits of the description by which it was duly designated by competent authority, and by which its limits were extended to the 'shore' of Hudson's Bay on the north, and curtailed to the entrance 'into Lake Superior' on the west. I apprehend that there can be no constitutional objection to the prerogative right of the Crown to make the extension. Those who maintain that the Province of Quebec was extended by the Proclamation of 1791 cannot, at least, controvert it. If, then, it was a constitutional exercise of the prerogative to extend it to the north, as assumed by the Arbitrators and acquiesced in by Ontario, how can the legal exercise of the prerogative, authorized by a specific provision of statute law to curtail it in the west, be denied? That specific provision of law will be found in the Quebec Act of 1774, enlarging the Province by certain additions that were to subsist only 'during His Majesty's pleasure,' by which power was undoubtedly given to the Crown to curtail it again, which was done by the new and specific description most carefully and minutely drawn up for the Earl of Durham in 1838, and continued thereafter.

"I conclude, therefore, that the Arbitrators were right in their construction of that part of the description of Upper Canada existing at the time of the passing of the B. N. A. Act—as it was, in fact, contended for by the Ontario Government—by which the Provinces had been, about thirty years before, extended to the shore of Hudson's Bay; and that, whether from their not being experts in matters of the kind, accustomed to deal with matters of boundary, or from the exceedingly defective manner in which the case for the Dominion was placed before them—which was, in fact, no case at all—they failed to give effect to the whole description, on one part of which they acted, and consequently failed to define correctly the western limit of the Province.

"The following is the description of Upper Canada as it entered Confederation:—

"The said Province being bounded on the east by the line dividing the Province from Lower Canada, beginning at a stone boundary on the north bank of Lake St. Francis, at the cove west of the Point au Beaudet, on the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of north thirty-four degrees west, to the westernmost angle of the said Seigneurie of New Longueuil; thence along the north-western boundary of the Seigneurie of Vaudreuil, running north, twenty-five degrees east, until it strikes the Ottawa River, to ascend the said river into the Lake Temiscaming; the said Province of Upper Canada being also bounded by a line drawn due north from the head of the said Lake until it reaches the shore of Hudson's Bay; the said Province of Upper Canada being bounded on the south, beginning at the said stone boundary between Lancaster and Longueuil, by the Lake St. Francis, the River St. Lawrence, the Lake of the Thousand Islands, Lake Ontario, the River Niagara, which falls (leads) into the Lake Erie, and along the middle of that lake; on the west by the channel of Detroit, Lake St. Clair, up the River St. Clair, Lake Huron, the west shore of Drummond Island, that of St. Joseph and Sugar Island, thence into Lake Superior."

"The description given as to its easterly boundary from the Ottawa, is a due north line to the shore of Hudson's Bay, and as its westerly limit the commencement of Lake Superior; and taking the description simply on its own merits, on the one point as well as the other, its westerly boundary must run from its extreme westerly extension where it enters Lake Superior, parallel to its eastern, due north to the shore of Hudson's Bay."

The Hon. Wm. McDougall, C.B., M.P., in his evidence, as well as in a memorandum which he wrote for the Government of Ontario, which will be found in the appendix, holds that the western boundary of Ontario extends to the north-west angle of the Lake of the Woods. Both he and the Hon. Mr. Mills dwell a good deal on what they conceive to have been the intentions of the Imperial Parliament in passing the Quebec Act, but in the opinion of your Committee it would be difficult to



arrive, with any degree of precision, at the views of men who lived in very troubled times over a hundred years ago, and they would consider it rather unsafe to go beyond the Act itself for evidence of the intentions of its framers, or outside the official documents issued under its authority for its interpretation. Besides, in those times the Parliamentary debates were not published, and the only record of the discussion on the Quebec Act is a book bearing the title of the "Cavendish Debates," which first saw light 65 years after the date of the occurrences to which it refers. Judge Johnson, on being interrogated as to the value of these debates as an authority, said:—"They would have the authority of any reports, if published at the time, subject to contradiction or correction. But when published 65 years afterwards, when the people who could contradict or correct them were dead, they could not possess any value."

The following is from the Hon. Mr. McDougall's evidence:—

*By Mr. Trow :*

"Q. After having made researches in this matter, being employed by the Ontario Government, where did you consider the western boundary lay?—I considered that the Act of 1774, and the evidence derived from the language of the preamble of the Act, from the history of the Act, and from the surrounding circumstances of the time and policy of the Government which are recorded and open to us, show clearly that the Mississippi River was intended to be, and after the passing of that Act was the western boundary of the then Province of Quebec. The Imperial Government desired to extend the western boundary of Quebec, which we know was a line drawn from Lake Nipissing to Lake Champlain. They wished to include in the Province of Quebec, as it then stood, certain French posts in the territory called the Illinois country. My impression is, and I think it can be conclusively proved before a court of justice, that the Government intended to make, and by the Act of 1774 did make the Mississippi River the western boundary. I dare say, you have had before you most of the evidence which, according to my view of the matter, establishes that point.

"Q. You take the Mississippi to its source?—Of course, when a river is taken as a boundary you must follow its winding and find out the main channel. We are not driven to do that now, because by a subsequent treaty with the United States, that country was ceded or transferred to them, and therefore it is only as to the interpretation of the Act of 1774, and its effect on our country beyond the head of the Mississippi, that it is important to enquire.

"Q. What interpretation do you put on the word "northward," when you come to the confluence of the two rivers?—I put the same interpretation on the word in that Act as I would in a deed in the case where any object is described lying to the northward from a point of starting, and being the point at which you are aiming. There has been a good deal of discussion in the House as to whether this word northward does not mean due north in the Act of 1774. I observe that in your enquiries you have resorted to the judgment given, in 1818, by the Court of Queen's Bench at Quebec in De Reinhardt's case. In that case the evidence of a surveyor, Mr. Saxe, was taken. His opinion differed from that adopted by the court.

"Q. His definition is the same as yours?—Yes. Where you have no fixed terminal point in view, the word northward or westward standing alone, without anything to explain it—where there is nothing to incline to one side or the other—must be taken to mean, and the courts have so held, a due north or due west line; but when there is some object mentioned in the description, that lies either east or west of north of the point from which you are starting, and you say northward to such a point, you do not mean, and you cannot be held to mean, due north.

*By the Chairman :*

"Q. But the direction was northward to the southern boundary of the territories of the merchant adventurers. These territories, as exhibited in the maps of those times, lay rather to the eastward than the westward of a due north line. Therefore, do you not suppose the northward line would run to those territories?—Yes; that is a correct interpretation if it was not clear that the Imperial Government, in

"the description which they themselves prepared and placed in the Act, and which passed the House of Lords, as well as from the surrounding circumstances and their subsequent Acts, meant the Mississippi River to be the boundary of Quebec on that side; unless the evidence is sufficient to satisfy a court of justice (assuming that this case may go before a court of justice) that the Mississippi River was the natural boundary which the Imperial Government and Parliament had in view, then the word "northward," as the Chairman assumes, might, and probably would, be read "due north." You would have nothing to direct you on the one side or the other, and having mentioned the Hudson's Bay territories which are mostly, as he says, east of a due north line, that would be a correct construction; but in the face of positive evidence that it was the intention to make the Mississippi River the western boundary of Quebec, and as the word "northward" is not opposed to that intention I do not see how it is possible to get over it. I am speaking of it now as a lawyer, or rather as a judge if called upon to decide the question.

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*By the Chairman :*

"Q. You believe the Hudson's Bay Company had territory, whatever its extent may have been, on the shore of Hudson's Bay, immediately on the confines of the Bay?—I think so. It never was defined, but it must be held now that they had territory there.

"Q. Do you believe the boundaries, as set up by the award, are the real boundaries of Ontario?—At what point?

"Q. At Hudson's Bay. Is the boundary line, as laid down by the award, the true northern boundary of Ontario?—That question raises the whole difficulty, I think, with respect to the northern boundary. If you will permit me, I will explain my view of it by reference to this map. In the first place, I think as a matter of law, we must admit to-day, for I think the courts will hold that the Hudson's Bay territories referred to in all recent negotiations exist, or did exist, as a matter of fact. You will observe in the British North America Act we have distinguished (it was done at my suggestion) between the North-West Territories and Rupert's Land (the original name of the Company's plantation), and they are treated as two distinct territories, the boundaries of which had been, or were capable of being, ascertained. I think, therefore, you must look for the southern boundary of Rupert's Land, somewhere inland in the neighborhood of Hudson's Bay. I think the evidence is sufficient to justify a court in deciding that question in the affirmative, though I admit it is a very difficult one, when you come to fix the metes and bounds. I dare say you have in the course of your enquiry, ascertained the fact that Commissioners were appointed by England and France, before the conquest by Canada, to settle the question of disputed boundary around Hudson's Bay. The English proposed a boundary extended two or three hundred miles into the country; the French proposed a narrower boundary near Hudson's Bay. The Commissioners came together, but never arrived at a binding agreement.

"Q. Still, both were inland from the shore?—I think the French always insisted on access to the Bay; but wars broke out, and in the end we succeeded to the inheritance of both those rights, the French right, wherever that might be, and the English right; but it will probably be held that we, as Englishmen, will be bound to say that our ancestors did not make any improper claim, and we will have to admit that the line extends further inland than the French would allow. With respect to the boundary between Upper and Lower Canada, when it leaves Lake Temiscaming you have got beyond the limit of old Quebec. When you pass the height of land you are in the disputed territories, and in order to get to the shore of Hudson's or James' Bay, you have to cross a portion of Rupert's Land, according to the English claim; and, therefore, I should say that in running a line along James' Bay to Albany River, and from there to Lake Winnipeg, the Arbitrators lost sight of the order of reference. All this country that will be taken out of the award by a line defining Rupert's Land,



"according to the English pretension prior to 1763, is merely a conventional addition to Ontario. It is a proposition to take in a territory as part of old Quebec, and now as part of Ontario, which was never legally or constitutionally included prior to this award. But, while I say that, I must add that if the true legal interpretation of the Act of 1774 requires you to run the western line due north from the head of the Mississippi, until it strikes the Hudson's Bay territories, then the arbitrators have left out a portion of country north of the Albany quite equal to this in territorial extent."

Mr. Thomas Hodgins, Q.C., who acted as one of the counsel for Ontario before the Arbitrators, claims that Upper Canada covered the whole of the North and North-West Territories from the confines of Hudson's Bay to the Rocky Mountains, and he ignores the Hudson's Bay Company's claims in great part. His evidence before your Committee, hereunto annexed, and his argument before the Arbitrators, which also is appended, should be considered in connection with the opinions of counsel accompanying the evidence of the Hon. D. A. Smith.

The Attorney-General for Ontario (Hon. O. Mowat), has not been examined, but his statement of the case for Ontario and his very able argument before the Arbitrators, are appended.

Professor Robert Bell, of the Geological Survey, was examined in reference to the character of the territory in dispute, and from his description, as well as from that contained in a pamphlet issued by the Government of Ontario and reproduced in the appendix, it would appear that, in many parts of the wide region extending from Hudson's Bay on the east to the confines of the prairies on the west, the soil is remarkably good, and the climate favorable to the growth of cereals. Valuable timber, including both white and red pine, abounds on the waters of Rainy River, and on the head waters of the Moose and Albany Rivers. The Albany is navigable for 250 miles of its course from the sea westward. Coal is to be found on the northern slope, and gold and silver have been discovered at Keewatin. The climate is throughout bearable, and even in the most northerly sections, not so severe but that garden vegetables and the hardier cereals can be grown, while in the western sections, about Rainy River, the Lake of the Woods and the Winnipeg, the climate is equal to that of Manitoba, the Indians raising Indian corn from year to year, as they have done from time immemorial."

On referring to the evidence in detail, as appended, and the report of the proceedings before the Arbitrators, it will be seen that on the part of Ontario it is claimed that the term "northward" in the Quebec Act was intended to apply to the whole territory east of the Mississippi, and that the Mississippi was the boundary line on the west. In support of this view, the two following commissions are always brought forward :—

27TH DECEMBER, 1774.

SIR GUY CARLETON—*Captain-General and Governor-in-Chief of the Province of Quebec.*

And further know you, that we, reposing especial trust and confidence in the prudence, courage and loyalty of you, the said Guy Carleton, of our especial grace, certain knowledge, and mere motion, have thought fit to constitute and appoint you, the said Guy Carleton, to be our Captain-General and Governor-in-Chief in and over our Province of Quebec, in America, comprehending all our territories, islands and countries in North America, bounded on the south by a line from the Bay of Chaleurs, along the highlands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the sea, to a point in forty five degrees of northern latitude, on the eastern bank of the River Connecticut, keeping the same latitude directly west, through the Lake Champlain, until in the same latitude, it meets with the River Saint Lawrence; from thence up the eastern bank of the said river to the Lake Ontario, thence through the Lake Ontario, and the river commonly called Niagara, and thence along by the eastern and south-eastern bank of Lake Erie, following the said bank until the same shall be intersected by the



northern boundary granted by the charter of the Province of Pennsylvania, in case the same shall be so intesected, and from thence along the said northern and western boundaries of the said Province, until the said western boundary strikes the Ohio; but in case the said bank of the said lake shall not be found to be so intesected, then following the said bank until it shall arrive at that point of the said bank which shall be nearest to the north-western angle of the said Province of Pennsylvania, and thence by a right line to the said north-western angle of the said Province, and thence along the western boundary of the said Province until it strikes the River Ohio, and along the bank of the said river westward to the banks of the Mississippi, and northward along the eastern bank of the said river to the southern boundary of the territory granted to the Merchant Adventurers of England trading to Hudson's Bay, and also all such territories, islands and countries which have, since the tenth day of February, one thousand seven hundred and sixty-three, been made part of the Government of Newfoundland as aforesaid, together with all the rights, members and appurtenances whatsoever thereunto belonging.

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18TH SEPTEMBER, 1777. MS. C. 12

SIR FREDERICK HALDIMAND—*Captain-General and Governor-in-Chief of the Province of Quebec.*

[This Commission contains Boundary Line descriptions similar to that of 27th December, 1774.]

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Reading these commissions literally and by themselves, they carry the western boundary of the then Province of Quebec to the Mississippi, and seem to bring the southern boundary of the Territories of the Merchant Adventurers of England trading into Hudson's Bay to that River, but they certainly do not carry the northern boundary of Quebec further north than the sources of the Mississippi. These commissions will, however, be considered in connection with other commissions of equal authority further on.

It has also been contended that the western boundary of Ontario runs to the north-west angle of the Lake of the Woods, and from thence westward to the Mississippi, as in the following commission :

22ND APRIL, 1786.

SIR GUY CARLETON, K.B, [afterwards Lord Dorchester]—*Captain-General and Governor-in-Chief of the Province of Quebec.*

And further know ye, that we, reposing especial trust and confidence in the prudence, courage and loyalty of you, the said Sir Guy Carleton, of our especial grace, certain knowledge and mere motion, have thought fit to appoint you, the said Sir Guy Carleton, to be our Captain-General and Governor-in-Chief in and over our Province of Quebec, in America, comprehending all our Territories, Islands, and Countries in North America, bounded on the south by a line from the Bay of Chaleurs, along the high lands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, to the north-westmost head of Connecticut River; thence down along the middle of that river to the forty-fifth degree of north latitude; from thence by a line due west on said latitude until it strikes the River Iroquois or Cataraqui; thence along the middle of said river into Lake Ontario; through the middle of said lake until it strikes the communication by water between that lake and Lake Erie; through the middle of said lake until it arrives at the water communication between that lake and Lake Huron; thence along the middle of said water communication into the Lake Huron; thence through the middle of said lake to the water communication between that lake and Lake Superior;

thence through Lake Superior northward of the Isles Royal and Phillipeaux to the Long Lake; thence through the middle of said Long Lake and the water communication between it and the Lake of the Woods to the said Lake of the Woods; thence through the said lake to the most north-western point thereof, and from thence on a due west course to the River Mississippi; and northward to the southern boundary of the territory granted to the Merchant Adventurers of England trading to Hudson's Bay; and also all such territories, islands and countries which have, since the tenth of February, one thousand seven hundred and sixty-three, been made part of the Government of Newfoundland, together with all the rights, members and appurtenances whatsoever thereunto belonging.

In 1791, the Constitutional Act 31 George III, cap. 31, was passed, and soon afterwards the foregoing commission of 22nd April, 1786, was *absolutely and completely revoked*, and a new commission limiting the Province of Upper Canada to so much of the former Province of Quebec as lay to the westward of the dividing line issued. In no commission subsequent to the date of the one so revoked were the boundaries of Upper Canada described as extending to the Lake of the Woods.

The following is the commission referred to:—

12TH SEPTEMBER, 1791.

GUY, LORD DORCHESTER—*Captain-General and Governor-in-Chief of the Provinces of Upper Canada and Lower Canada.*

Greeting:

Whereas, We did by our Letters Patent, under Our Great Seal of Great Britain, bearing date the twenty-second day of April, in the twenty-sixth year of our reign, constitute and appoint you, Guy, Lord Dorchester [then Sir Guy Carleton], to be our Captain-General and Governor-in-Chief in and over our Province of Quebec in America, comprehending all our territories, islands and countries in North America then bounded as in Our said recited Letters Patent was mentioned and expressed.

*Now know ye, that we have revoked, determined, and by these presents do revoke and determine, the said recited Letters Patent, and every clause, article or thing therein contained.*

And whereas, we have thought fit by our order, made in our Privy Council on the nineteenth day of August, one thousand seven hundred and ninety-one, to divide our said Province of Quebec into two separate provinces, to be called the Province of Upper Canada and the Province of Lower Canada, by a line to commence at a stone boundary on the north bank of the Lake St. Francis at the Cove west of the Pointe au Baudet, in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit to the direction of north thirty-four degrees west to the westernmost angle of the said Seigneurie of New Longueuil; thence along the north-western boundary of the Seigneurie of Vaudreuil, running north twenty-five degrees east, until it strikes the Ottawas River, to ascend the said river into the Lake Temmiskaming, and from the head of the said lake by a line drawn due north until it strikes the boundary line of Hudson's Bay; the Province of Upper Canada to comprehend all such lands, territories and islands lying to the westward of the said line of division, as were part of our said Province of Quebec, and the Province of Lower Canada to comprehend all such lands, territories and islands lying to the eastward of the said line of division, as were part of our said Province of Quebec.

And whereas, by an Act passed in the present year of our reign, intituled "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, intituled 'An Act for making more effectual provision for the Government of 'Quebec, in North America, and to make further provision for the Government of 'the said Province,'" further provision is hereby made for the good Government and prosperity of our said Provinces of Upper and Lower Canada.



Further know ye, that we, reposing especial trust and confidence in the prudence, courage and loyalty of you, the said Guy, Lord Dorchester, of our especial grace, certain knowledge and mere motion, have thought fit to constitute and appoint you, the said Guy, Lord Dorchester, to be our Captain-General and Governor-in-Chief of our said Province of Upper Canada, and of our said Province of Lower Canada, respectively, bounded as hereinbefore described.

On the 16th of the same month (Sept., 1791) instructions, signed by the King's own hand, were issued to Lord Dorchester, in which the boundaries set down in the foregoing commission of the 12th of the same month are particularly mentioned as among the things to be made public, as will be seen on reference to the following:—

EXTRACT from His Majesty's Instructions to His Excellency Lord Dorchester, dated at St. James', the 16th September, 1791, viz.:—

1st. With these our instructions, you will receive our commission under our Great Seal of Great Britain constituting you our Captain-General and Governor-in-Chief in and over our Provinces of Upper Canada and Lower Canada, *bounded as in our said commission is particularly expressed*. In the execution, therefore, of so much of the office and Trust we have reposed in you, as relates to our Province of Lower Canada, you are to take upon you the administration of the Government of the said Province, and to do and execute all things belonging to your command according to the several powers and authorities of our said commission under our Great Seal of Great Britain, and of the Act passed in the present year of our reign therein recited, and of these our instructions to you, and according to such further powers and instructions as you shall at any time hereafter receive under our Signet and Sign Manuals, or by our order in our Privy Council.

2nd. And you are with all due solemnity, before the members of our Executive Council, to cause our said Commission to be read and published, which being done, you shall then take, and also administer to each of the members of our said Executive Council, the oaths mentioned in an Act passed in the first year of His late Majesty King George the First.

On the 18th November following the much discussed Proclamation of General Alured Clarke was issued, but leaving its consideration aside for the moment, your Committee beg to draw the attention of your Honorable House to the fact that for a period of nearly forty-seven years, intervening between the 16th September, 1791, the date of the foregoing instructions to Lord Dorchester, and the 30th March, 1838, the descriptions of boundaries in the commissions and instructions to the Governors were all precisely the same as those in the commission of 12th September, 1791, above quoted.

On the latter date (30th March, 1838) the description of the boundaries of Upper Canada having evidently been very carefully reconsidered, was given as follows:—

30TH MARCH, 1838.

JOHN GEORGE, EARL OF DURHAM.—*Captain-General and Governor-in-Chief of the Province of Upper Canada.*

Our said Province of Upper Canada; the said Province being bounded on the east by the line dividing that Province from Lower Canada, beginning at a stone boundary on the north bank of the Lake St. Francis at the Cove west of the Point au Beaudet in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of north thirty-four degrees west to the westernmost angle of the said Seigneurie of New Longueuil, thence along the north-western boundary of the Seigneurie of Vaudreuil, running north twenty-five degrees east until it strikes the Ottawa River, to ascend the said river into the Lake Temiscaming, the said Province of Upper Canada being also



bounded by a line drawn due north from the head of the said lake until it reaches the shore of Hudson's Bay; the said Province of Upper Canada being bounded on the south beginning at the said stone boundary between Lancaster and Longueuil by the Lake St. Francis, the River St. Lawrence, the Lake of the Thousand Islands, Lake Ontario, the River Niagara, which falls (leads) into the Lake Erie, and along the middle of that lake; on the west by the channel of Detroit, Lake St. Clair, up the River St. Clair, Lake Huron, the west shore of Drummond Island, that of St. Joseph and Sugar Island, thence into Lake Superior.

In all subsequent commissions in which descriptions are given they are the same, nearly word for word, as in the commission of 30th March, 1838, to the Earl of Durham.

It will be observed that the conditions as to a western boundary in these later commissions would be met by a line running northward from the most easterly point of Lake Superior. But the commissions say "into" Lake Superior without indicating how far *into* that lake or, in other words, how far westward along the international boundary, where it runs through Lake Superior, Upper Canada was to extend before meeting the western limitary line. One thing, however, is certain, and that is that if these later commissions are to be taken as the guide—and they are of equal authority with the earlier ones—the western boundary line must be found in Lake Superior, not certainly beyond it. Two commissions, those of 22nd December, 1774, and 18th September, 1777, above quoted, carry the western boundary line of the then Province of Quebec, along the Mississippi to the southern boundary of the territories of the Merchant Adventurers of England trading into Hudson's Bay, which, according to the wording of these documents, must be found on that river, and one commission (subsequently revoked), that of 22nd April, 1786, to Lord Dorchester, carries the line to the north-west angle of the Lake of the Woods and thence westward to the Mississippi.

Seven subsequent commissions of equal authority with the foregoing, the first dated the 30th March, 1838, carry the boundary of Upper Canada simply "into" Lake Superior.

The entrance to Lake Superior might, therefore, according to these subsequent commissions, be adopted as the western limit of Upper Canada, and such a limit would be about as far to the eastward of the prolongation of a line running due north from the junction of the Ohio and Mississippi as the Mississippi line, so called, is to the westward of a line so prolonged.

In the view of your Committee there must have been some cause for this very marked change in the wording of the boundary descriptions, and your Committee believe that it lay in the state of affairs which had arisen both at the head of Lake Superior, and to the westward of the water-shed. A new colony, with wide ramifications, was springing up in the Indian Territories, the south-eastern boundary of which, according to the then existing descriptions, came up to the Height of Land, and the change was, doubtless, made so that the commissions to Governors might be such as to prevent the possibility of the description in the one case clashing with that which had been adopted in the other. At that time, too, the Hudson's Bay Company were pressing for a renewal, in a new form, of their license of trade in the Indian Territories. The boundaries of these Territories had been much discussed and a decision indicating their locality, at least in part, given in the highest Provincial Court then existing, so that there can, in the opinion of your Committee, be no doubt as to the question of the boundaries between Upper Canada and the Indian Territories, as well as the Hudson's Bay Company's Territories, having been at that time brought to the serious attention of the Imperial authorities, with the result shown in a new description in the commission of 1838, to Lord Durham, which was never afterwards altered or revoked.

The following evidence, given by the Hon. Donald A. Smith, M.P., formerly Governor of the Hon. Hudson's Bay Company's Territories, will serve to show that the Colony of Assiniboia was in some measure recognized by the Imperial Government.

*By the Chairman :*

"Q. With regard to the charter of the Hudson's Bay Company, I believe that part of the condition on which it was granted was that the Company should establish colonies within the territories which it covered. I believe that in carrying out this condition the Company established a colony called the "Colony of Assiniboia." Is not that the case?—It is.

"Q. As to whether that colony was recognized by the Imperial Government or not; that is an important question. I believe that on two occasions the Imperial troops were sent out to maintain order in the Territory; is that so?—Yes, that colony was recognized by the Imperial Government, and Her Majesty's troops were sent out there. The 6th Regiment and the Canadian Rifles were there at different times.

*By Mr. Weldon :*

"At what time was the 6th Regiment there?—I think in 1846, under Colonel Crofton.

"Q. And the Canadian Rifles, when?—In 1857 the Canadian Rifles were sent there under Major Seaton, and afterwards under Captain Hibbert. The Home Government also assisted in forming a body of pensioners for service at Red River at that time. Those pensioners were sent out there, and I believe some of them are, at this moment, in the Red River country, although not employed as a force.

*By Mr. DeCosmos :*

"Q. Who paid the force?—The Imperial Government paid the troops and the Company contributed to their sustenance.

"Q. Did the Imperial Government also contribute anything to meet the expenses of the pensioners?—Not further than their pensions.

*By the Chairman :*

"Q. The Imperial Government corresponded with the Governors and the Government of the new Colony of Assiniboia, I presume?—With the Governors of the Hudson's Bay Company.

"Q. Had the Government of that colony courts established and power to administer the law; had it, for instance, the power of life and death?—It had the power of life and death. There was a Council of Assiniboia, and a Recorder who was Judge—Judge Thom.

*By Mr. Royal :*

"Q. He was the first Recorder?—Yes; as I have said, the Government had the power of life and death, and one person was executed.

*By Mr. DeCosmos :*

"Q. What was the date of these appointments?—The appointment of the first Recorder must have been in 1838 or 1839.

*By the Chairman :*

"Q. The colony, I believe, had clearly defined boundaries?—It had.

"Q. And these boundaries are given in Mr. Mills' report?—Yes.

*By Mr. Trow :*

"Q. I suppose the old boundaries cover the whole of Dakotah?—A portion of Dakotah.

"Q. And also Minnesota?—Some part of Minnesota.

*By Mr. DeCosmos :*

"Q. What was the ascertained boundary of the Colony of Assiniboia?—I don't recollect exactly. I should state that I have given no particular attention to this subject for many years past.

*The Chairman read from the Proclamation of Governor McDonell, as follows :—*

"Whereas the Governor and Company of Hudson's Bay have ceded to the Right Honorable Thomas, Earl of Selkirk, his heirs and successors, for ever, all that tract of land or territory, bounded by a line running as follows, viz : Beginning on the western shore of Lake Winnipic, at a point in fifty-two degrees and thirty minutes north latitude; and thence running due west to Lake Winnipigashish, otherwise called

"Little Winnipic; then in a southerly direction through the said lake, so as to strike its western shore in latitude fifty-two degrees; then due west to the place where the parallel of fifty-two degrees north latitude intersects the western branch of Red River, otherwise called Assiniboine; then due south from that point of intersection to the height of land which separates the waters running into Hudson's Bay from those of the Missouri and Mississippi Rivers; then in an easterly direction along the height of land to the source of the River Winnipic (meaning by such last-named river the principal branch of the waters which unite in Lake Saginogas); thence along the main stream of those waters and the middle of the several lakes through which they pass, to the mouth of the Winnipic River; and thence in a northerly direction through the middle of Lake Winnipic, to the place of beginning; which territory is called Assiniboia, and of which I, the undersigned, have been duly appointed Governor."

"Mr. Weldon—What date was that given?"

"The Chairman—It says, "given under my hand at Fort Daer (Pembina), the 8th day of January, 1814."

*By the Chairman, to witness:*

"Q. So that the colony existed for a long time, and was recognized by the Imperial Governments as a Crown Colony, in fact?—It was. The Hudson's Bay Company had a council called the Northern Council. Their factors or officers were the Council of Rupert's Land for all the purposes of Government. Besides having their officers and government at Red River, the Company had Sheriffs for Rupert's Land."

"Q. Outside of the colony?—Yes."

"Q. So that they had all the powers of Government?—Yes."

*By Mr. Ross:*

"Q. Did the southern boundary of the so-called colony of Assiniboia correspond with what was supposed to be the southern boundary of the Hudson's Bay Company's territory?—Yes; the height of land."

"Q. But the eastern boundary did not in any way correspond with what was supposed to be the eastern boundary of the Hudson's Bay Company?—It did not."

"Q. Then it was only the boundary of the colony on the south side that corresponded with the boundary of the Hudson's Bay Company?—Yes; the boundaries of the colony were made simply for its convenience."

Judge Johnson, formerly Governor of Assiniboia and Recorder of Rupert's Land, also shows very clearly that Assiniboia was recognized by the Imperial Government, and that it had the power, although restricted, of making laws and ordinances, and further, that it had no connection with Upper Canada. The following is from his evidence:—

*"By the Chairman:*

"Q. Was the Colony of Assiniboia recognized by the Imperial Government, and in what way?—The existence *de facto* of the Colony of Assiniboia was certainly recognized in a variety of ways, and in the most authoritative manner by the Crown of England in a series of Acts that admit of no doubt whatever. They sent the 6th Regiment there in 1846 or 1847, under Colonel Crofton. They were sent by orders of the Duke of Wellington to occupy that place, so that in view of any trouble in respect to the Oregon question, they might be made available on the other side of the mountains. However that was, they were sent there. After that, when I was sworn in as Governor in 1855, after the retirement of Colonel Crofton and the troops, I made a demand for troops for the purpose of keeping order, and I got troops commanded by Major Seaton. They sent out a company of 100 men of the Canadian Rifles, British troops in the pay of the British Government, and they were quartered there some years."

*By Mr. Ouimet:*

"Q. You were sent there in 1855 as Governor of Assiniboia?—Yes. Besides the troops, the Crown of England sent out a number of pensioners whom they re-enrolled in a permanent form, to whom the Hudson's Bay Company agreed to give land on



" their becoming settlers there. That was done on the retirement of the 6th Regiment about the year 1850 or 1851, and those pensioners were there with their families while I was there as Governor. Some of them and their descendants are still there. But I found a more important recognition, accidentally, yesterday evening, on the part of the English Crown, of the fact that the Colony of Assiniboia was a colony, the existence of which they not only knew of but with respect to which they reserved to themselves the right to establish, of their prerogative, Courts of Justice whenever they should see fit.

" Q. You mean the Imperial Government?—Yes. The way I came across that was in referring to some old notes which I kept when I was in Assiniboia in 1857 or 1858. In turning them over I found the opinions given by the Attorney and Solicitor-Generals of England of that day, Sir Richard Bethel and Sir Henry Keating. I found that I had extracted from a newspaper the opinions which those gentlemen were supposed to have given. I also found that I had made this note: 'There is an all-important paragraph omitted,' and I find the paragraph is inserted in my handwriting. Then, to verify it, I looked at the opinion as it is published by authority in this country, and contained in the book entitled 'Statutes, documents and papers bearing on the discussion respecting the northern and western boundaries of the Province of Ontario, compiled by direction of the Government of Ontario.' I found that the paragraph which was omitted in publication, probably for some party purpose, at that time, was this: [to be found on page 200 of the book referred to] 'The company has, under the charter, power to make ordinances (which would be in the nature of by-laws) for the government of the persons employed by them, and also power to exercise jurisdiction in all matters civil and criminal; but no ordinance would be valid that was contrary to the common law, nor could the company insist on its right to administer justice as against the Crown's prerogative right to establish Courts of Civil and Criminal Justice within the territory.' Here then, in 1857, you have the two law officers of the Crown in England stating it was the Crown's prerogative right, at that time, if they should see fit, to establish Courts of Civil and Criminal Justice in Assiniboia. Now, that is a declaration entirely at variance with the possibility of its being part of Upper Canada, because to Upper Canada had been granted legislative powers and a constitution of its own, and in its Legislature had been vested the right to constitute Courts of Justice. That was a decisive recognition of the fact by the law officers in England that that colony *de facto* existed, that the Crown recognized it, and not only had the power but possibly at that time contemplated the exercise of the power of making it a Crown colony, and establishing Courts of Justice there irrespective of Upper Canada, to which it was not considered to belong at all.

" Q. It was considered that the water-shed formed the northern boundary line of Upper Canada?—Undoubtedly, and it was considered that the western boundary was the line running due north, as it was laid down in the De Reinhardt case, from the confluence of the Mississippi and Ohio to the southern boundary of the Hudson Bay Company's territory.

By Mr Trow :

" Q. Is the word due north used?—No; the word northward is used, but that has been interpreted by the most eminent Judge who ever lived in Lower Canada, Chief Justice Sewell, to mean undoubtedly north.

By the Chairman :

" Q. You say that the surrender of the title of the Hudson's Bay Company to the Crown of England and to Canada, and its acceptance by them, established its validity? Have you opinions of learned counsel as to the validity of the Hudson's Bay Company's charter, and the extent of territory it covered?—There have been a series of opinions from the earliest times, going back to the day of Lord Mansfield, then Mr. Murray, and coming down to the present day, which, with very little variation, have always maintained the right of the company to the soil, and to the territory; but have not maintained with equal certainty their right to exclusive trading privilege. I take it that the Crown of England had the same right to grant land when it was

"granted by King Charles, that the Crown in Canada has to grant land now apart from exclusive trade privilege. It was in the year 1839, on the 13th March, at a general court held in the Hudson's Bay House, London, that the district of Assiniboia was erected and was declared 'co-extensive with such portion of the territory (these are the words of the order) granted to the late Thomas, Earl of Selkirk, on the 12th June, 1811, as is now within the domains of Her Britannic Majesty.' That is what constituted the district of Assiniboia, and it was so constituted *de facto*, whatever its precise extent, it has certainly been recognised by a series of Acts by the British Government. I may state more than that: I came down from the Red River country in the fall of 1858. Mr. Watkin was in this country, and was associated with Sir Edmund Head in connection with the interests of the Hudson's Bay Company, or with respect to some proposition for establishing a Government in that territory by-and-by. It was felt it could no longer be held as a monopoly. I was, at the request of the Duke of Newcastle, called upon to draw up a report and make a recommendation as to the form of Government which was desirable. This was in 1863. I reported in favor of a Crown colony. I believe Sir Edmund Head did so too. Most certainly the Duke of Newcastle recognised as a possible event that the Crown of England might make a Crown colony of it. I believe it was a mere accident that it was not done. At one time it was considered not only desirable, but almost certain, that it would be made a Crown colony, which is perfectly at variance with its being part of Upper Canada.

"Q. You had a judicature established there for the trial of criminal cases?—Yes. The validity of the company's charter, in that respect, has always been acknowledged by the law officers of England. They administered justice there, perhaps in a ready, but in a very efficient manner; and on one occasion, I am happy to say not in my time, but in that of my predecessor, an Indian was tried for his life. He was found guilty by a jury, condemned to be executed, and was executed just outside Fort Garry.

"Q. So that it was *de facto* a separate colony?—It was unquestionably. It was *de facto* a separate colony, and recognised as such by the Crown of England, which intimated more than once the possibility of their exercising their authority there quite independent of Canada."

From the foregoing it is quite evident that, on the one hand, the colony of Assiniboia was to some extent recognized by the Imperial Government, and that, on the other, it was never in any way treated as a part of the Province of Upper Canada, so that any assumed boundary extending the limits of Ontario into that colony would be in error.

In reference to the proclamation of General Alured Clarke, your Committee are of opinion that it cannot be construed as extending the limits or jurisdiction of Upper Canada beyond the boundaries established by the Quebec Act. Had it been intended that this proclamation should extend the boundaries of Upper Canada, as claimed by the counsel for Ontario, over vast regions beyond the limits assigned by the Act and the commissions issued under it, there would, your Committee apprehend, have been something in the subsequent action of the Imperial Government to show that such was the intention, but far from this being the case, there is a great deal of convincing proof that no such intention was ever entertained.

The Act 43 Geo. 3rd, cap. 138, was passed for the purpose of extending the jurisdiction of the courts of justice in the Provinces of Upper and Lower Canada to the Indian Territories. These Indian Territories are described in the preamble as being "not within the Provinces of Lower or Upper Canada, or either of them," and there can, in the opinion of your Committee, be no question as to the localities where the "crimes and offences" which gave rise to the Act were committed. It is a matter of well-known history that the disputes and rivalries between the fur traders culminated, towards the close of the past century and in the beginning of the present, in feuds which had their manifestation in numerous acts of violence and bloodshed on the upper waters of the Albany and on the



Rainy River and the Winnipeg. On the Assiniboine, too, and even on Lake Superior, between the River Pie and the Grand Portage, outrages were of frequent occurrence. The Act was passed to provide the means of restraining and punishing such outrages, and it was subsequently applied and acted on in these districts. Your Committee are of opinion that the whole of the country, at least, west and north of the St. Lawrence water-shed, was Indian Territory, although in part, no doubt, also Hudson's Bay Company's Territories, and they are not certain that the country bordering on Lake Superior was not considered at that time to be Indian territory. At all events, cases arose both on Lake Superior and inland from it which were tried under the authority of the Courts of Quebec, conspicuous among which was that of one Mowat who killed a gentleman of the name of McDonell at Eagle Lake, a place on the route between English River and the Albany. This man (Mowat) was taken to Montreal, tried and found guilty of manslaughter and punished accordingly, by being imprisoned and branded, as was the custom of those times; this was in 1809, but the troubles still continuing, in fact getting worse, in the district intervening between Lake Superior, on the one side, and the prairie region about the Assiniboine and Red Rivers on the other, the Governor General issued a proclamation, of which the following is a copy:—

By His Excellency SIR JOHN COAPE SHERBROOKE, Knight Grand Cross of the Most Honorable Military Order of the Bath, Captain-General and Governor-in-Chief in and over the Province of Lower Canada, Upper Canada, Nova Scotia, New Brunswick and their several Dependencies, Vice-Admiral of the same, Lieutenant-General and Commander of all His Majesty's Forces in the said Province of Lower Canada and Upper Canada, Nova Scotia and New Brunswick, and their several Dependencies, and in the Islands of Newfoundland, Prince Edward, Cape Breton, and Bermuda, &c., &c.

#### A PROCLAMATION.

Whereas in and by a certain Statute of the Parliament of the United Kingdom of Great Britain and Ireland, made and passed in the forty-third year of His Majesty's Reign, intituled "An Act for extending the Jurisdiction of the Courts of Justice in the Provinces of Lower Canada and Upper Canada to the Trial and Punishment of persons guilty of Crimes and Offences within certain parts of North America, adjoining the said Provinces," it is amongst other things enacted and declared that from and after the passing of the said Statute, "All Offences committed within any of the Indian Territories or parts of America, not within the limits of either of the said Provinces of Lower or Upper Canada, or of any Civil Government of the United States of America, shall and be deemed to be Offences of the same nature and shall be tried in the same manner and subject to the same Punishment as if the same had been committed within the Province of Lower or Upper Canada."

And whereas, under and by virtue of the above in part recited Statute, Justices of the Peace have been duly nominated and appointed with power and authority to apprehend within the Indian Territories aforesaid, and to convey to this Province of Lower Canada for trial, all and every person and persons guilty of any crime or offence whatever:

And whereas there is reason to believe that divers breaches of the peace, by acts of force and violence, have *lately* been committed within the aforesaid Indian Territories, and jurisdiction of the aforesaid Justices of the Peace:

I have therefore thought fit, and by and with the advice of His Majesty's Executive Council, of and for the Province of Lower Canada, to issue this Proclamation, for the purpose of bringing to punishment all persons who may have been or shall be guilty of any such act or acts of force or violence as aforessid, or other crime and offence whatever, and to deter all others from following their pernicious example, thereby requiring all His Majesty's subjects and others within the said Indian Territories, to avoid and to discourage all acts of force and violence whatsoever, and all



proceedings whatever tending to produce tumults and riots, or in any way to disturb the public peace.

And I do hereby strictly charge and command all Justices of the Peace so as aforesaid nominated and appointed under and by virtue of the above-mentioned Statute, and all Magistrates throughout this Province, and do require all others of His Majesty's subjects generally in their several and respective stations, to make diligent enquiry and search to discover, apprehend and commit, or cause to be committed to lawful custody for trial, in due course of Law, pursuant to the provisions in the above-mentioned Statute contained, all persons who have been, or shall be guilty of any act or acts of force or violence as aforesaid, nor of any other crime or crimes, offence and offences within the said Indian Territories, to the end that the laws may be carried into prompt execution, against all such offenders, for the preservation of peace and good order therein.

Given under my Hand and Seal at Arms, at the Castle of St. Lewis, in the City of Quebec, in the said Province of Lower Canada, this Sixteenth Day of July, in the Year of Our Lord One Thousand Eight Hundred and Sixteen, and in the Fifty-sixth Year of His Majesty's Reign.

J. C. SHERBROOKE.

By His Excellency's Command.

JOHN TAYLOR,  
*Deputy Secretary.*

Those who argue that Lieutenant-Governor Alured Clarke's proclamation extended Upper Canada to the northward and westward of the St. Lawrence water-shed, will here see that a proclamation of at least equal weight issued by the Governor General described the disturbed district of which Red River was the very centre, in 1816, as being Indian territory "not within the limits of Lower or Upper Canada, or either of them." The contention that the Act of 1803 was intended to apply to the Arctic water-shed, is, in the opinion of your Committee, undeserving of serious notice.

The suggestion seems to have had its origin with Lord Selkirk, who, when in England in 1815, wished to produce the impression that the Red River country which he was then attempting to colonize, was neither Canadian nor Indian territory, but, notwithstanding this, he, on his return to Canada, had himself and some of his adherents sworn in as Justices of the Peace under the Act, and they subsequently issued warrants as such, not on the Arctic water-shed, but within the disturbed region west of Lake Superior.\* (See Appendix, page .)

In 1816, the Government of Quebec appointed two Commissioners, Messrs. Colman and Fletcher, to investigate the causes of the disturbances within the Indian territories. These gentlemen went to the Red River settlement, where they held investigations, not in regard to disturbances on the Arctic water-shed, of which they had probably never heard, but in regard to the lamentable occurrences of which the Red River settlement was then the focus. (See Appendix, page .)

That the country west and north of the water-shed and west of the due north line, so often referred to, was Indian Territory, was decided by the Court of King's Bench, Quebec, in the de Reinhardt trial.

In regard to the north-eastern boundary of Ontario, the dividing line between the Province of Upper Canada and the Province of Quebec as established by the Constitutional Act of 1791, and the Order in Council issued under it, as will be seen on reference to the commission of 12th September, 1791, to Lord Dorchester, already quoted, is described as running "from the head of the said Lake (Temiscaming) by a line drawn due north until it strikes the boundary line of Hudson's Bay." This description was continued in all subsequent commissions up to March, 1838, when

\*See History of Fur Trade and Appendices in Library.

the matter appears to have been reconsidered. And from the latter time forward the descriptions ran as in the following commission:—

30TH MARCH, 1838.

JOHN GEORGE, EARL OF DURHAM.—*Captain-General and Governor-in-Chief of the Province of Upper Canada.*

Our said Province of Upper Canada; the said Province being bounded on the east by the line dividing that Province from Lower Canada, beginning at a stone boundary on the north bank of the Lake St. Francis at the Cove west of the Point au Beaudet, in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of north thirty-four degrees west to the westernmost angle of the said Seigneurie of New Longueuil, thence along the north western boundary of the Seigneurie of Vaudreuil, running north twenty-five degrees east until it strikes the Ottawa River, to ascend the said river into the Lake Temiscaming, the said Province of Upper Canada being also bounded by a line drawn due north from the head of the said lake until it reaches the shore of Hudson's Bay; the said Province of Upper Canada being bounded on the south, beginning at the said stone boundary between Lancaster and Longueuil by the Lake St. Francis, the River St. Lawrence, the Lake of the Thousand Islands, Lake Ontario, the River Niagara, which falls (leads) into the Lake Erie, and along the middle of that lake on the west by the channel of Detroit, Lake St. Clair, up the River St. Clair, Lake Huron, the west shore of Drummond Island, that of St. Joseph and Sugar Island, thence into Lake Superior.\*

In regard to the description first mentioned, the evidence goes to show that the words "Boundary line of Hudson's Bay" meant a line at a greater or less distance from the shore, and not, as has been sometimes contended, the shore itself. It was a territorial boundary line, in fact, which, previous to the cession, was held to be the dividing line between the British and French possessions in that part of the continent. In the interests of England, as represented by the Hudson's Bay Company, it was claimed that this dividing line was in a certain position, far inland from the coast and in those of France, that it was in another position somewhat nearer to the coast. Without entering into a discussion as to the precise position of the line or the correspondence which took place regarding it, subsequent to the Treaty of Utrecht, your Committee have no hesitation in expressing the opinion that there was around Hudson's Bay, on the south and west, a considerable extent of country which formed no part of the Province of Quebec, as constituted by the Act of 1774, nor, consequently of Upper Canada, as established by the Constitutional Act of 1791; and, further, that from the date of the Treaty of Utrecht (1713) the Hudson's Bay Company were, up to the time at which they disposed of their territorial rights to the Dominion, in possession of the territories bordering on Hudson's Bay. But in 1838, the description of boundaries in the commissions to Governors was altered, and made to run as follows: "To ascend the said river into Lake Temiscaming, the said Province of Upper Canada being also bounded by a line drawn due north from the head of the said lake until it reaches the shore of Hudson's Bay." If, therefore, a commission can be construed as extending the limits of a Province, if the authority under which that commission was issued had the power to extend or curtail territorial boundaries, then, the Province of Upper Canada was carried to the shore of Hudson's Bay, in 1838, and a due north line from the head of Lake Temiscaming to the shore became a portion of its eastern boundary.

But the same commission which contained the foregoing description, carried the western limit of Upper Canada only "into" Lake Superior, and

\* In the commission of 1st October, 1846, to Lord Elgin, the wording is somewhat amended, but the description is essentially the same, and as in the former commissions, commencing with that of 1838, to Lord Durham, the western boundary of Upper Canada is only carried "into" Lake Superior.



if it is to govern in the one case it is but reasonable that it should do so in the other. In this connection, however, it may be remarked that the judges who appeared before your Committee seemed to be strongly of the opinion that the boundaries of Provinces, with constitutional governments, could not be altered by commissions to Governors, or proclamations. On the other hand, the Attorney-General of Ontario, whose reputation as a constitutional lawyer stands high, as well as the other counsel for Ontario, based their arguments, in great part, on what they conceived to be the undoubted prerogative of the Crown to enlarge or curtail the limits of Provinces (see proceedings before the Arbitrators in Appendix); and indeed the Quebec Act gives the Crown, as already mentioned, the power to curtail, at least, for it enacts that the "territories, islands and countries," which are to be added to the Province of Quebec, as constituted by the Royal Proclamation of 7th October, 1763, "be and they are hereby *during His Majesty's pleasure* annexed to and made part and parcel of the Province of Quebec." This seems to leave no doubt as to the power of the Crown to curtail the limits, and in this view the question to be solved would simply be whether the Crown had done so or not. By the Commission of 22nd April, 1786, to the Governor-General, Sir Guy Carleton, the western limit of the Province of Quebec was extended to the Lake of the Woods, and from thence westward to the Mississippi. This, no doubt, was an extension of the Province to the westward, that is, measuring its former limits by the descriptions in the preceding Commissions, in none of which, however they might be construed, were the boundaries carried so far to the north and west. It has been claimed that this being a Commission to a Governor General, it was meant to cover the whole territory to the westward, whether within the limits of the Province or not. However this may be, the Commission was, as already stated, revoked, and that, too, in the most decided terms, soon after the passing of the Constitutional Act, by the Commission of 12th September, 1791, to Lord Dorchester, and in the latter Commission and succeeding ones, for a period of nearly forty-seven years, the Province of Upper Canada is described as simply embracing so much of the former Province of Quebec as lay to the westward of the dividing line between the two Provinces. Here was an evident exercise of the Royal prerogative,—in the first place a Commission (that of 1786) running the boundaries northward, through a new water shed, and westward to the Mississippi, and in the next a Commission, that of 12th September, 1791, revoking the former one and limiting the boundaries of Upper Canada to so much of the former Province of Quebec as lay to the westward of the dividing line. Had it been intended that the Province of Upper Canada should extend westward to the Lake of the Woods, and from thence to the Mississippi, it is reasonable to believe that the description would have been repeated, but instead of its being in any way renewed or continued, the very first Commission subsequently issued revoked it absolutely.

There is no reason to suppose that there was any accidental omission in the description contained in the series of Commissions commencing with that of 30th March, 1828, to Lord Durham. The wording is very clear and precise, and the curtailment of Upper Canada, on the west, to the entrance of Lake Superior, must have been a matter which met with the serious consideration of the Imperial authorities. The cause of the change should be sought for in the condition of matters which had arisen, as already stated, at the head of Lake Superior and in the Indian Territories, which latter had been declared, by the Act of 1803, to be beyond the limits of the Provinces and for which a particular jurisdiction had been provided and exercised, added to which, a colony was growing up within these Indian Territories which the Imperial authorities had never treated as a part of Upper Canada, and the south-eastern boundaries of that colony came up to the Height of Land.

The Commission of 1786, to Lord Dorchester, carried the line "through Lake Superior, northward of the Isles Royal and Phillipeau." The wording of the Commission of 1828 to Lord Durham is simply *into* Lake Superior, and there is nothing said in the latter of the Isles Royal and Phillipeau. That the change was intentional and fully considered before being made is obvious, and the only point left indefinite is how far "into" Lake Superior the line should go. To run it "through" would



evidently be in contravention of the description. To carry it even as far as the Isle Royal and Phillippeau, which were points clearly noted in the Commission of 1788 would also seem to be contrary to the meaning and intention indicated by the Commission of 1838, for these Isles were marks on the route and would not have escape mention had it been intended to carry the line, not only into Lake Superior, but through it to the longitude of these Isles.

Taken by themselves, the later Commissions, commencing with that of 30th March, 1838, to Lord Durham, certainly seem to limit Upper Canada, on the west, to the entrance of Lake Superior, but they extend the Province northward to the shore of Hudson's Bay. If those who hold that the Crown can by virtue of its prerogative extend or curtail the limits of a Province, are correct in their views, and if these Commissions are to be taken as resulting from an exercise of the Royal Prerogative then the boundaries of Ontario need no further definition than to determine how far into Lake Superior the Province is to extend on the west.

If, on the other hand, the Acts of the Imperial Parliament are to govern, without reference to commissions or proclamations, the weight of evidence goes to show that the boundary on the west would, according to the Quebec Act, be the prolongation of a line drawn due north from the point of junction of the Ohio and Mississippi. This line has the unanimous decision of the Court of King's Bench of Quebec, given in 1818, in its favour, and that decision has never been reversed.

On the north, the Quebec Act makes the southern boundary of the territories of the Merchant Adventurers of England trading into Hudson's Bay the limit. But there were two Acts dealing with the Indian territories subsequently passed viz.: the Acts 43 Geo. 3rd, cap. 138 and 1—2 Geo. 4th, cap. 66. These Indian territories, in the view of your Committee, came, at least, to the Height of Land, north of Lake Superior, and, as declared in the Acts above referred to, were "not within the Provinces of Upper or Lower Canada, or either of them." On the east the boundary would be the former line of division between Upper Canada and Quebec which, after following the Ottawa to the head of Lake Temiscaming runs due north to the boundary line of Hudson's Bay—in other words, to the southern boundary of the Hudson's Bay Company's territories.

It will thus be seen that there are two ways of arriving at a decision as to the boundaries between the territories of the Dominion and Ontario. The question is, in fact, narrowed down to this: If the description in the later commissions, under the great seal, to the Governors General, are to be taken as emanating from an authority having power to add to or curtail the limits of Provinces; if, in fact, they have the authority of the Royal Prerogative, then the boundaries between the Province of Ontario and the territories of the Dominion are easily designated. If, on the other hand, the decision is to be governed by Acts of Parliament, without reference to commissions or proclamations, then, also, the boundaries might be delineated without difficulty, but, as above set forth, they would be different from those so clearly described in the commissions running from 1838 to the confederation of the Provinces.

In reference to the award made by the Arbitrators on the 3rd day of August, 1878, a copy of which is appended, (page     ), your Committee are of opinion that it does not describe the true boundaries of Ontario. It seems to your Committee to be inconsistent with any boundary line ever suggested or proposed, subsequent to the Treaty of Utrecht (1713). It makes the Provincial boundaries run into territory granted by royal charter, in 1670, to the Merchants Adventurers of England trading into Hudson's Bay, and it cuts through Indian Territories which, according to the Act 43rd George III., cap 138, and 1—2 George IV, cap 66, formed "no part of the Provinces of Lower Canada or Upper Canada, or either of them," and it carries the boundaries of Ontario within the limits of the former Colony of Assiniboia, which was not a part of Upper Canada.

All of which is respectfully submitted.

S. J. DAWSON,  
Chairman.

COMMITTEE ROOM No. 8,  
Wednesday, 5th May, 1880.

Committee met at 11:30 o'clock, a.m.

PRESENT :

Mr. Dawson, Chairman.  
" Robinson,  
" DeCosmos,  
" Royal,  
" Trow,  
" Mousseau,  
" Caron,  
" McDonald (Cape Breton),  
" Weldon,  
" Ouimet,  
" Ross (Middlesex).

It was moved by Mr. DeCosmos, seconded by Mr. Royal, "That the Report now submitted by the Chairman to the Committee be adopted."

Moved in amendment by Mr. Ross, seconded by Mr. Trow, "That this Committee met for the first time on the 23rd day of February; that since that time the following persons have been examined, with a view to ascertain such facts as would enable your Committee to arrive at a just conclusion, viz.:—Lindsay Russell, Surveyor-General; Col. Dennis, Deputy Minister of the Interior; Hon D. Mills, M.P., Professor Bell, of the Geological Survey; Hon. D. A. Smith, M.P., Hon. Justice Johnson, Thomas Hodgins, Q.C., Hon. Justice Armour, William Murdock, Civil Engineer; P. L. Morin, P.L.S., Hon. Justice Ramsay, Mr. Wm. McD. Dawson, Hon. Wm. McDougall, C.B.

"That a large amount of documentary evidence has been submitted from time to time, which is worthy of careful consideration.

"That on Monday, the 3rd inst., the evidence of Mr. Wm. McD. Dawson was submitted in printed form which opened an entirely new issue in connection with the investigations of the Committee.\*

"That on Tuesday, the 4th inst., your Committee met, for the first time, to deliberate upon the great mass of oral and documentary evidence collected during their protracted labors, and sat for a short time.

"That, in the limited time at the disposal of your Committee, before the prorogation of Parliament, it is impossible to consider, with that care and deliberation which so important a question deserves, the mass of evidence submitted to your Committee, therefore

"Resolved, That the Minutes of the Committee, and all the evidence oral and documentary be reported to the House.

Which was lost on the following division :—

Yeas.  
Messrs. Ross,  
Trow,  
Weldon—3.

Nays.  
Messrs. Caron,  
DeCosmos,  
Dawson,  
Mousseau,  
McDonald (Cape Breton),  
Ouimet,  
Royal,  
Robinson—8.

The main motion was then carried on the same division.

\* This evidence was given on the 30th April, and printed proofs sent to the Members of the Committee on 1st May. It was brought up for consideration as above stated, on 3rd May, following.

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Moved by Mr. Ross, seconded by Mr. Trow,  
"That the Minutes of the Committee and the evidence taken be reported to the  
House."—Carried.

The following letter was received from Mr. Brecken, M.P.,

HOUSE OF COMMONS,  
5th May, 1880.

DEAR SIR,—I regret that I could not attend the meeting this morning of the Committee, on the Boundaries between Ontario and the unorganized Territories of the Dominion. Had I been present, I would have felt it my duty to have supported your report.

Believe me, yours faithfully,

FRED DE ST. C. BRECKEN.

SIMON J. DAWSON, Esq., M.P.,  
*Chairman of Committee.*



# EVIDENCE TAKEN

BEFORE the Select Committee of the House of Commons appointed to enquire into and to report to this House upon all matters connected with the Boundaries between the Province of Ontario and the unorganized Territories of the Dominion with power to send for persons and papers.

HOUSE OF COMMONS,  
COMMITTEE ROOM No. 8,  
TUESDAY, 2nd March, 1880.

## EVIDENCE.

The Committee met.—Mr. Dawson occupied the Chair.

Colonel DENNIS was called and examined:—At the request of the Chairman he read his report to the Honorable the Minister of Justice on the Boundary Question, dated the 1st October, 1871.

## REPORT OF COLONEL DENNIS.

OTTAWA, 1st October, 1871.

Remarks on the question of the boundary between the Province of Ontario and the Dominion Lands or North-West Territories.

1. The above limit is identical with the westerly boundary of the Province of Quebec as the same was fixed by the Quebec Act in 1774.

2. In describing the boundary of Quebec, in the act referred to, having commenced at the Bay of Chaleurs and continued westerly to the north-west angle of the Province of Pennsylvania, it goes on in the following language: "And thence along the western boundary of the said Province (Pennsylvania) until it strikes the River Ohio, and along the bank of the said river westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchant Adventurers of England trading to Hudson's Bay."\*

3. The above phraseology (underlined), in describing the westerly boundary of Quebec, has been, and is still, interpreted in different ways according to the private opinions or prejudices of parties.

4. Those interested in locating the boundary of Ontario as far as possible to the west, argue that the term "*to the banks of the Mississippi and northward to the southern boundary of the territory, etc., etc.*," means that in going northward, the banks of the Mississippi are to be followed to its source, and that they were in fact so intended in the Act.

5. On the other hand it is contended, in the interest of the Dominion, that the language "*to the banks of the Mississippi,*" simply means to the banks of the said river at the point where it is joined by the Ohio, and the words which follow, "*and northward to the southern boundary, etc.,*" was intended to be construed as upon a *due north line*.

\* See paper marked E annexed.

6. There is no evidence forthcoming which would show clearly what was intended by the Act, and in considering the question, therefore, we are left to draw conclusions from co-relative circumstances; a consideration of these have led the writer to believe that a due north line from the forks of the Ohio was intended as the westerly boundary of Quebec, in support of which he would submit:—

7. Had such not been the intention, that is to say, had it been intended that the Mississippi River should be the west boundary, inasmuch as the evident intention to make the Ohio River the southern boundary west of Pennsylvania, was thus definitely expressed "*and along the banks of the said river westward to the banks of the Mississippi,*" then such intention would have been expressed in corresponding terms: that is to say, the boundary would have been described as "*northward along the bank of the Mississippi, etc., etc., etc.*"

8. This argument has the more force from the fact stated as follows:—The Bill as submitted to the House, described the boundaries as "heretofore part of the territory of Canada in North America, extending southward to the banks of the River Ohio, westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchant Adventurers, etc., etc."

9. Mr. Burke, in the interests of the Provinces of New York and Pennsylvania, moved in amendment (the House being in Committee) to substitute the following for the boundary, viz.: after North America "by a line drawn, etc., etc., etc., to the north-west part of the boundary of Pennsylvania, and down the west boundary of the Province by a line drawn thence till it strike the Ohio."

The above words were inserted.\*

10. Then followed another amendment, which was adopted, and after "Ohio" should be inserted "*and along the bank of the said Ohio.*"

Now, had the *banks of the Mississippi* been intended to be adhered to in going "northwards," is it not clear that the necessity of an amendment to that effect would similarly have made itself evident at the time, and does not the absence of any reference to the point or discussion whatever upon it go to show that "northwards" was intended to be on a due north line.

11. The map which was used in the House of Commons to illustrate the question of the boundaries of Quebec in the debate on the Act, is said to have been one known as Mitchell's map, dated February 13th, 1775.

12. It is stated that there were two editions of this map, the first one being withdrawn on the publication of the second, *which latter contained "numerous important corrections, but the date was not altered."* †

13. The only copy of Mitchell's map available is in the Library here, and, on inspecting the River Mississippi on it, we find that the course of that river is taken up abruptly at a point in 47° 12' north latitude and 101° 30' west longitude, at which point we further find on the map the following note by the author:

"The head of the Mississippi is not yet known. It is supposed to arise about the 50th degree of latitude and the west bounds of this map, etc., etc., etc."

14. Now it is not at all probable that with the uncertainty asserted to exist on the map itself used by the House of Commons at the time the boundaries were debated and settled, with regard to the source and direction of a great part of the course of the Mississippi, that the House intended its banks as the boundary of Quebec.

15. Such a theory, leaving as it would, one of the principal boundaries of the Province in great uncertainty, would be entirely inconsistent with the minuteness and precision of language insisted on in settling the Ohio as the southern boundary.

16. Taking the strictly legal construction of the description, it is claimed that the direction expressed as "northwards" is *upon a due north line*, in favor of which see the decision on this specific case in the judgment of Chief Justice Sewell in connection with the trial of Charles de Reinhardt in Quebec, 1817, for murder committed on the Winnipeg River. ‡

\* C. debates, p. 123, and Journals of House of Commons, No. 34.

† See Wright's Cavendish Debates. (Note following preface.)

‡ See Report of trial, in Library, House of Commons, Ottawa.

17. The northerly boundary of Ontario, between it and the Dominion lands, is undoubtedly the southern boundary of the Hudson Bay Company's possessions. It is possible that some difference of opinion may arise as to where this boundary should be located on the ground.

18. The charter of the Hudson's Bay Company, dated 2nd May, 1670 (see paper marked F), described their grant as "extending over and including all lands and territories drained by the waters emptying into Hudson's Bay."

19. The boundary in such case would be the ridge dividing the water-sheds north and west of Lake Superior, which intersects the Dawson route at height of land portage, and crosses the international boundary between South Lake and Gunflint Lake.

20. It may be argued on behalf of Ontario that the dividing ridge which should bound the Hudson's Bay Company's possessions on the south is that which may be described as the northerly section of the \* "range which, dividing to the north-west of Lake Superior, separates the waters flowing direct to Hudson's Bay from those flowing into Lake Winnipeg, crossing the Nelson River at Split Lake, or Lac des Forts, etc.;" and it will probably be urged in favor of this view that the grant to the company only covered "such lands and territories as were not already actually possessed by the subjects of any other Christian Prince or State," and that inasmuch as the country to the south of the range of high lands last described was considered to belong to France, that therefore King Charles would give no tittle in what he did not own, and certain old maps (see Band C) are referred to in support of this view.

21. It is not important to discuss this view, if it is conceded that a due north line from the forks of the Ohio bounds Ontario to the west; as in such case the height of land would be intersected just north-west of Lake Nipigon at a point about which there can be very little dispute.

22. If, on the other hand, the contention of Ontario is allowed, that is to say, that the banks of the Mississippi should be followed to their source, and that a line should be drawn thence due north to intersect the height of land alluded to in paragraph 20, then the westerly boundary would extend over 300 miles north of the Lake of the Woods, and the Province would be made to include a territory which, as regards form and extent, could not, in the opinion of the undersigned, have been at all contemplated or intended at the time of passing the Quebec Act.

23. But the undersigned assumes, on the strength of opinions to such effect, given by eminent counsel to whom the question had been submitted, that the "southern boundary of the territory granted to the Merchant Adventurers of England trading to Hudson's Bay" was, and is, the height of land bounding the water-shed of the basin of Hudson's Bay; and, even admitting that the banks of the Mississippi, to the source of the said river, were intended by the Act, a due north line from the latter would, in the course of a very few miles, intersect such height of land, as the same is in the immediate vicinity of the source of the Mississippi, and between it and the Lake of the Woods, the waters in which latter drain into Hudson's Bay.

24. The only territory, therefore, affected by the question of the due north boundary from the forks of the Ohio, as against the Mississippi as the boundary, is that colored yellow on the tracing marked A, herewith shown, as contained between the due north line from the forks of the Ohio, and the curved line defining the height of land to the south and west, because, even construing the west limit of Ontario in the Quebec Act as the banks of the Mississippi, and a line due north from the source of that river to the height of land forming the southern boundary of Hudson's Bay Company's territory, such description would only take effect where, and to the east and north of where, such height of land crosses the international boundary between Gunflint and South Lakes, as before mentioned, confirming, in fact, the western and northern boundaries of the Province, in accordance with their description by Bouchette, and which usage had established up to the acquisition of the territories in 1869.

\* See Report, Commissioner Crown Lands, 1857.



25. Looking at the very irregular character of the boundary which would be formed by following the ridge between the water-sheds, it is suggested by the writer whether it would not be better for Ontario and the Dominion to agree on a conventional boundary, for instance, in some way, as shown on tracing lettered C.

26. The saving, in such case, in the expense of surveying and defining the boundaries on the ground, would be at least one-half; besides which, making the limits of this regular character, would facilitate the laying out of the lands adjoining them in future times.

(Signed)

J. S. DENNIS.

OTTAWA, October 1st, 1871.

Papers and maps accompanying the preceding remarks submitted to the Hon. the Minister of Justice.

- A.—Tracing of Cotton's map (modern), showing sources and course of the Mississippi.
- B.—Tracing of Jeffrey's map of 1760.
- C.—Tracing of De Lisle's map of 1740.
- D.—Tracing of (reduced scale) Mitchell's map of 1755.
- E.—Extract—Quebec Act, 1774.
- F.—Extract—Charter H. B. Co., 1670.
- G.—Tracing part of Devine's map, north of Lake Superior (to show conventional boundary proposed).
- H.—Extract—Bouchette's history of Canada, describing boundaries (1832).
- I.—Extract—Opinion of Judges on boundary, from De Reinhardt's trial.
- K.—Extract—Commission to Guy Carleton, 1786.
- L.—Extract—King's Proclamation, 1763.

(E.)

From an Act for making more effectual provisions for the government of the Province of Quebec in North America. (Quebec Act, 1774.)

Whereas His Majesty, by his Royal Proclamation bearing date the seventh day of October, in the third year of his reign, thought fit to declare the provisions which had been made in respect to certain countries, territories, and islands in America, ceded to His Majesty by the Definitive Treaty of Peace, concluded at Paris, on the tenth day of February, one thousand seven hundred and sixty-three.

And whereas, by the arrangements made by the said Royal Proclamation, a very large extent of country, within which there were several colonies and settlements of the subjects of France, who claimed to remain therein under the faith of the said Treaty, was left without any provision being made for the administration of civil Government therein, and certain parts of the territory of Canada where sedentary fisheries had been established and carried on by the subjects of France, inhabitants of the said Province of Canada, under grants and concessions from the Government thereof, were annexed to the Government of Newfoundland, and thereby subjected regulations inconsistent with the nature of such fisheries.

May it therefore please your most Excellent Majesty, that it may be enacted, and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled and by the authority of the same, that all the Territories, Islands, and Countries in North America belonging to the Crown of Great Britain, bounded on the south by a line from the Bay of Chaleurs, along the high lands which divides the rivers that empty themselves into the River St. Lawrence, from those which fall into the sea, to a point in forty-five degrees of northern latitude on the eastern bank of the River Connecticut, keeping the same latitude directly west, through the Lake Champlain, until in the same latitude it meets the River St. Lawrence; from thence

the eastern bank of the said river to the Lake Ontario; thence through the Lake Ontario, and the river commonly called Niagara, and thence along by the eastern and south-eastern bank of Lake Erie, following the said bank, until the same shall be intersected by the northern boundary, granted by the charter of the Province of Pennsylvania, in case the same shall be so intersected, and from thence along the northern and western boundaries of the said Province until the said western boundary strike the Ohio. But in case the said bank of the said lake shall not be found to be so intersected, then following the said bank until it shall arrive at that point of the said bank which shall be nearest to the north-western angle of the said Province of Pennsylvania, and thence by a right line to the said north-western angle of the said Province, and thence along the western boundary of the said Province until it strike the River Ohio, and along the bank of the said river westward to the banks of the Mississippi, and northward to the southern boundary of the Territory granted to the Merchants Adventurers of England trading to Hudson's Bay, and also all such Territories, Islands and Countries which have, since the tenth of February, one thousand seven hundred and sixty-three, been made part of the Government of Newfoundland, be, and they are hereby, during His Majesty's pleasure, annexed to and made part and parcel of the Province of Quebec, as created and established by the said Royal Proclamation of the seventh of October, one thousand seven hundred and sixty-three.

Provided always, that nothing herein contained relative to the boundary of the Province of Quebec, shall in any wise affect the boundaries of any other colony.

Provided always, and be it enacted that nothing in this Act shall extend, or be construed to extend to make void or to vary, or to alter any right, title, or possession derived under any grant, conveyance, or otherwise howsoever, of, or to any lands within the said Province, or the Provinces thereto adjoining, but that the same shall remain and be in force, and have effect as if the Act had never been made, &c., &c.

(F.)

Description of Grant from Charter of Hudson's Bay Company. Charter the Second, 2nd May, 1670.

We have given, granted, and confirmed, and by these presents for us, our heirs and successors, do give, grant and confirm unto the said Governor and Company, and their successors, the sole trade and commerce of all those seas, straits, bays, rivers, lakes, creeks, and sounds, in whatsoever latitude they shall be, that lie between the entrance of the straits commonly called Hudson's Straits, together with all the lands and territories upon the countries, coasts, and confines of the seas, bays, lakes, rivers, creeks and sounds aforesaid, that are not already actually possessed by, or granted to any of our subjects, or possessed by the subjects of any other Christian Prince or State, with the fishing of all sorts of fish, whales and sturgeons, and other royal fishes in the seas, bays, inlets and rivers within the premises, and the fish therein taken, together with the royalty of the sea upon the coasts within the limits aforesaid, and all mines royal, as well discovered as undiscovered, of gold, silver, gems and precious stones to be found or discovered within the territories, limits and places aforesaid; and that the said land be from henceforth reckoned and reputed as one of our plantations or colonies in America, called "Rupert's Land." And further, we do by these presents, for us, our heirs and successors, make, create and constitute the said Governor and Company for the time being, and their successors, the true and absolute Lords and proprietors of the same territory, limits and places aforesaid, and of all other the premises, saving always the faith, allegiance and sovereign dominion due to us, our heirs and successors, for the same, to have, hold, possess, and enjoy the said territory, limits and places, and all and singular other the premises hereby granted as aforesaid, with their and every of their rights, members, jurisdiction, prerogatives, royalties, and appurtenances whatsoever, to them the said Governor and Company, and their successors, for ever, to be holden of us, our heirs and successors, as of our manor of East Greenwich, in our County of Kent, in fee and common socage, and not in capite, or by Knight's service, yielding and paying yearly to us, our heirs and



successors, for the same, two black elks, and two black beavers, whensoever and as often as we, our heirs and successors, shall happen to enter into the said countries, territories, and regions hereby granted.

(H.)

EXTRACTS from Bouchette's History of Canada, 1832. As calculated to fix what was supposed to be the boundary between Upper Canada and the Hudson's Bay Territories at that time.

Page 29.—By the North-West Territories is generally understood all that portion of country extending from the head of Lake Superior westward to the western shores of America, northward to the frozen ocean and north-westward to the limits of the territory granted under the Hudson's Bay Charter.

"Tracing the boundary upon the Author's Geographical Map of the British North American Provinces, published in 1815, and upon Arrowsmith's Map of North America, which embraces the whole of the Indian Territories, the dividing high lands are found to pass at the sources of East Main, Rupert, Harricanaw, Abitibi and Moose Rivers and the various branches of Albany, Severn and Hill Rivers, all of which disembogue in Hudson's or James' Bay, leaving the rivers on the opposite side to descend to the St. Lawrence and the great lakes."

Page 30.—Returning to the vicinity of Lake St. Anne, in the region of Lake Superior, another ridge of high lands is found, diverging south-westerly from the height of land already mentioned, which, after dividing the waters of Lake Superior from those of Lake Winnipeg, winds round the sources of the Mississippi, then descend southerly to the Mexican Gulf and the Red River, flowing northerly into Lake Winnipeg. It is along these high lands that the Hudson's Bay Company pretend to establish their southern boundary, their claim embracing all that tract of country included within an irregular line drawn through the sources of the rivers discharging their waters into Hudson's and James' Bay.

Page 40.—The second section of the Indian Territory comprises the country between  $49^{\circ}$  and  $56^{\circ}$  of north latitude, on the southern boundary of British America in that part of the continent on one side, and the high lands constituting the boundary of Hudson Bay, according to Bennett's and Mitchell's maps, on the other, the Stony Mountains on the west, and the height of land dividing the waters of Lake Superior from Lake Winnipeg, on the east.

Page 43.—The extensive tract of country sold by the Hudson's Bay Company to the Earl of Selkirk, comprehends the whole course of the Red River, and is bounded as follows: commencing on the western shore of Lake Winnipeg, at a point in  $52^{\circ} 30'$  north latitude, the line runs due west to Lake Winnipegosis, or Little Winnipeg then in a southerly direction through the lake so as to strike its western shore in latitude  $52^{\circ}$ , then due west to the place where the parallel of  $52^{\circ}$  strikes the Assiniboine River, thence due south to the high lands dividing the waters of Missouri and Mississippi from those flowing into Lake Winnipeg, thence easterly by those high lands to the source of River La Pluie, down that river through the Lake of the Woods and River Winnipeg, to the place of beginning.

This territory, to which the name Assiniboine was given, is understood to comprise a superficies of about 116,000 square miles, one-half of which has since fallen within the limits of the United States, according to the boundaries determined upon by the convention of 1818, between the American Government and Great Britain.

Its surface is generally level, presenting frequent expansive grassy plains that yield subsistence to innumerable herds of buffalo. The aggregate of the soil is light and inadequate to the growth of trees either large or abundant, but the banks of the rivers often exhibit more promising allusions, and have, when cultivated, produced very competent returns to the agriculturist.

Pages 63 and 64.—The Province of Upper Canada, thus divided, lies between the parallels of  $41^{\circ} 47'$  and  $49^{\circ}$  of north latitude, and extends westward from  $74^{\circ} 30'$  of west longitude from the meridian of Greenwich. It is bounded on the south by the



United States, on the north by the Hudson's Bay Territory and the Grand or Ottawa River, on the east by the Province of Lower Canada, and on the west its limits are not easy to ascertain. They may perhaps fairly be considered to be formed by the head waters of the rivers and streams that fall into Lake Superior, at or about the height of land on the Grand Portage in longitude—west. The vast section of country appertaining to the British Dominions to the west and north-west of this point is generally known by the denomination of the Western Country or North-West Indian Territories. The line of demarcation between this Province, that is Upper Canada, and the United States, from the monument of St. Regis, on the parallel of the 45th degree of north latitude, westward to the Lake of the Woods, was sufficiently settled by the commissioners appointed to decide the same with reference to the treaty of 1783, under the Treaty of Ghent, at least as far as that line runs from St. Regis through the rivers and lakes to the Strait of St. Mary's, as will appear on reference to the report of those commissioners, Appendix No. 1.

An enumeration of the islands from their magnitude and importance most worthy of note, comprehended within the limits of this Province, will be found in the note on page 16.

From the western limit of Lower Canada, this Province is bounded by the Ottawa as far as Lake Temiscaming, thence by a line drawn due north to the southern boundary of the Hudson's Bay Territory. This line has been generally understood to indicate a range of highlands dividing the rivers and streams which fall into Hudson's and James' Bays, from those which fall into the Rivers St. Lawrence and the lakes of Canada, and forming, naturally, the northern boundary of the Province.

Page 72.—From the same point, stretching in a north-western course, it continues to divide the waters falling into Lake Huron from those emptying themselves into Hudson's and James' Bays, and terminates in the grand ridge of highlands separating the waters of Hudson's Bay from those of the great lakes.

(I.)

*(From the Published trial of DeReinhardt.)*

There are, however, two other quarters which require your consideration.

First, Upper Canada. The western boundary of Upper Canada is a line drawn due north from the junction of the Rivers Ohio and Mississippi, in the latitude of  $37^{\circ} 10'$  north,  $88^{\circ} 50'$  west longitude. I am bound to tell you that it is the Court who are to decide upon the law, and you who are to judge of the facts, and according to law, we heard the arguments of counsel on the subject yesterday, and to-day, we have decided that the western line of Upper Canada is the line which I have mentioned; if, then, the Dalles are to the east of that line they are in the Province of Upper Canada, and consequently, not within our jurisdiction.

Page 292 and 293.—The Statute describes the entire line of circumspection of the Province which it erects under the name of the Province of Quebec, and describes it very exactly.

The part I have been so particular in reading is the part upon which it is considered that a misdirection has been given by the Court to the jury. It is necessary to observe, relative to this line, that it is a curved line in some parts and a straight line in others. That, whilst going along the banks of the Ohio it is curved, but as soon as it reaches the banks of the Mississippi it becomes a straight line.

It follows the banks of the Ohio in a curve, but the words of the Statute are imperative; when it reaches the mouth of the Mississippi it is to proceed northward in a straight line; if it had been intended that it should continue on along the banks of the Mississippi, it would have said so. It carries the line to the bank of the Mississippi, and what right have we to say that it should run along or within the banks where they who framed the Act omit it. They say thence it is to run northward; you have contended that this means to incline north according to the course of the river; it is impossible for us to say so, we are bound to take the Statute in its words. It is im-

possible for us to do otherwise ; it is a fixed and certain boundary, and according to the Statute, we have to the best of our knowledge decided it.

In the decision we have made we are supported by the authority of my Lord Hardwicke in the case of Penn and Baltimore. In the disputes between Penn the proprietor of Pennsylvania and my Lord Baltimore on the question relative to the limits of Maryland, a similar difficulty arose, and the case is to be found at length in 1 Vessey, senr., 444.

I mention this case because the court have taken upon themselves to decide the limits of Canada original jurisdiction, relative to the Colonial Territories of the King, is in the King and his Council.

In this dependent Province, nevertheless, we have been compelled to give a decision upon the question, not from any wish on our part, but because it was brought before us incidently, and there was no avoiding it. The power of deciding finally is, however, at home ; the question will be taken before the King and his Council, and in deciding the limits of Upper Canada they will either confirm or reverse our decision according as we have done right or wrong, so that as to any consequences that may result from our error, if error we have committed, they will be obviated by the superior authority to whom the question is to be referred.

(K.)

*(From Commission to Sir Guy Carleton, Governor Province of Quebec, &c.)*

22nd April, 1786.

Page 110.—And further, know ye that we, reposing especial trust and confidence in the prudence, courage and loyalty of you, the said Sir Guy Carleton, of our especial grace, certain knowledge and mere motion, have thought fit to appoint you, the said Sir Guy Carleton, to be our Captain-General and Governor in Chief in and over our Province of Quebec, in America, comprehending all our territories, islands and countries in North America ; bounded on the south by a line from the Bay of Chaleurs, along the high lands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean to the north-westernmost head of Connecticut River ; thence down along the middle of that river to the forty-fifth degree of north latitude ; from thence by a line due west on said latitude until it strikes the River Iroquois or Cataraque, thence along the middle of said river into Lake Ontario, through the middle of said lake until it strikes the communication by water between that lake and Lake Erie, through the middle of said lake until it strikes at the water communication between that lake and Lake Huron ; thence along the middle of said water communication into the Lake Huron ; thence through the middle of said lake to the water communication between that lake and Lake Superior ; thence through Lake Superior northward of the Isles Royal and Phillippeaux to the Long Lake ; thence through the middle of said Long Lake and the water communication between it and the Lake of the Woods to the said Lake of the Woods ; thence through the said lake to the most north-western point thereof, and from thence on a due west course to the River Mississippi, and northward to the southern boundary of the territory granted to the Merchant Adventurers of England trading to Hudson's Bay, and also all such territories, islands and countries which have, since the tenth of February, one thousand seven hundred and sixty-three, been made part of the Government of Newfoundland, together with all the rights, members, and appurtenances whatsoever thereunto belonging.

Now know ye, that we have revoked and determined, and by the presents do revoke and determine, the said receipted letters patent and every clause, article or thing therein contained. And whereas we have thought fit, by our order, made in our Privy Council on the nineteenth day of August, one thousand seven hundred and ninety-one, to divide our said Province of Quebec into two separate provinces, to be called the Province of Upper Canada and the Province of Lower Canada, by a line to commence at a stone boundary on the north bank of the Lake St. Francis, at the



cove west of Point au Baudet in the limit between the Township of Lancaster and the seigneurie of New Longueuil, running along the said limit in the direction of north thirty-four degrees west to the westernmost angle of the said seigneurie of New Longueuil; thence along the north-western boundary of the seigneurie of Vaudreuil, running north twenty-five degrees east until it strikes the Ottawa River, to ascend the said river into the Lake Temiscaming, and from the head of the said lake by a line drawn due north until it strikes the boundary line of Hudson's Bay, the Province of Upper Canada to comprehend all such lands, territories and islands lying to the westward of the said line of division as were part of our said Province of Quebec.

(L.)

MEMORANDUM throwing light on boundary between Ontario and Dominion Lands.  
Authorities—Chisholm's Papers.

Pages 8 and 9.—Extract from King's Proclamation for erecting the 4 new Governments, of Quebec, East Florida, West Florida and Grenada, 7th October, 1763.

1st. The Government of Quebec, bounded on the Labrador coast by the River St. John, and from thence by a line drawn from the head of that River, through the Lake St. John to the south end of the Lake Nipissing; from whence the said line, crossing the River St. Lawrence and the Lake Champlain in forty-five degrees of north latitude, passes along the high lands which divide the rivers that empty themselves into the said St. Lawrence River from those which fall into the sea; and also along the north coast of the Bay de Chaleurs and the coast of the Gulf of St. Lawrence to Cape Rosieries, and from thence, crossing the mouth of the River St. Lawrence by the west end of the Island of Anticosti, terminates at the aforesaid River St. John.

2nd. The Government of East Florida, bounded to the westward by the Gulf of Mexico and the Assalochicola River, to the northward by a line drawn from that part of said river, where the Catahouchee and Flint Rivers meet, to the source of St. Mary's river, and by the course of the said river to the Atlantic Ocean, and to the east and south by the Atlantic Ocean and the Gulf of Florida, including all the islands within six leagues of the sea coast.

3rd. The Government of West Florida, bounded to the southward by the Gulf of Mexico, including all islands within six leagues of the coast, from the River Assalachicola to Lake Pontchartrain to the westward by the said lake, the Lake Manrepas and the River Mississippi, to the northward by a line drawn east from that part of the River Mississippi which lies in thirty-one degrees of north latitude to the River Apalachicola or Catapouchoe, and to the eastward of the said river.

4th. The Government of Grenada, comprehending the island of that name, together with the Grenadines and the Islands of Dominica, St. Vincent and Tobago.

And to the end that the open and free fishery of our subjects may be extended to and carried on upon the coast of Labrador and the adjacent islands, we have thought fit, with the advice of our said Privy Council, to put all that coast from the River St. John to Hudson's Straits, together with the Islands of Anticosti and Madaline, and all smaller islands lying upon the said coast, under the care and inspection of our Governor of Newfoundland.

We have also, with the advice of our Privy Council, thought fit to annex the Islands of St. John and Cape Breton, or Isle Royal, with the lesser islands adjacent thereto to our Government of Nova Scotia.

We have also, with the advice of our Privy Council aforesaid, annexed to our Province of Georgia all the lands lying between the Rivers Attamaha and St. Mary's.

Page 11.—And whereas it is just and reasonable, and essential to our interest and the security of our colonies, that the several nations or tribes of Indians with whom we are connected, and who live under our protection, should not be molested or disturbed in the possession of such parts of our dominions and territories as not having been ceded to us, are reserved for them or any of them as their hunting grounds, we do therefore, with the advice of our Privy Council, declare it to be our



royal will and pleasure that no Governor or Commander-in-Chief in any of our colonies of Quebec, East Florida or West Florida, do presume upon any pretence whatever, to grant warrants of survey, or pass any patents for lands beyond the bounds of their respective governments, as described in their commissions, as also that no Governor or Commander-in-Chief of our other colonies and plantations in America, do presume for the present, and until our further pleasure be known, to grant warrants of survey or pass patents for any lands beyond the heads or sources of any of the rivers which fall into the Atlantic Ocean, from the west or north-west, or upon any lands whatever, which, not having been ceded to, or purchased by us as aforesaid, are reserved to the said Indians, or any of them. And we do further declare it to be our royal will and pleasure for the present, as aforesaid, to reserve under our own Sovereignty protection and Dominion, for the use of the said Indians, all the land and territories not included within the limits of our said three new Governments, or within the limits of the territory granted to the Hudson's Bay Company, as also all the land and territories lying to the westward of the sources of the rivers which fall into the sea from the west and north-west, as aforesaid, and we do hereby strictly forbid, on pain of our displeasure, all our loving subjects from making any purchases or settlements whatever, or taking possession of any of the lands above reserved without our especial leave and license for that purpose first obtained.

*By Mr. Robinson :—*

1. What was the occasion of your writing that report?—Sir J. A. Macdonald requested me to look into the matter and make a report.

2. When is it dated?—In 1871.

*By the Chairman :—*

3. In your remark you seem to consider that the height of land is the southern boundary of the territory granted to the Merchants Adventurers of England trading into Hudson's Bay?—I do.

*In answer to Mr. Trow :—*

4. I set out with the proposition that the Quebec Act fixed the westerly boundary of Quebec. The question, then, appeared to me to be, whether it was a due north line or whether the banks of the Mississippi were the boundaries?

*By Mr. DeCosmos :—*

5. What do you call the banks of the Mississippi?—The boundary of the river.

6. How do you find the river?—The Mississippi, as shown upon the original map of Mitchell, is the first large river westerly of the head of Lake Superior. Therefore, I take it, the present Mississippi is that river, because that is the first large river west of Lake Superior, and that was therefore the river intended in the Quebec Act.

7. If it is alleged that the banks of the Mississippi form the western boundary of the Province of Quebec, it is desirable we should have some evidence as to the latitude and longitude of the banks of the Mississippi; and then, knowing there are various tributaries, we require to know what tributaries constitute the Mississippi. Where is the real source of the Mississippi? Can we trace it back to the source defined by the original explorer?—I had no difficulty in identifying it.

8. The Mississippi of to-day may be one river, and that of last century quite a different river?—Not so late as 1774. Jeffery's map of 1762 fixes the present Mississippi as the Mississippi of that date.

9. We know that map-makers have a fashion of guessing at locations. I was looking not later than to-day at a map that came from Col. Dennis' office, and I saw the head-waters of a branch of the Yukon rises in Francis Lake, whereas I have the best evidence that Francis Lake forms one of the sources of the Liard that falls into the Mackenzie. I mention this to show how little dependence can be placed on maps?—The map to which you allude was traced from a copy of the latest map of Alaska issued by the United States Land Department.

10. It will require to be shown that Jeffery's map is the one accepted at the time of the legislation in question and on which the Orders in Council have been based?—I think the wonder is that in these remote days they should have approximated as nearly as they did to the geography of the country.

*By Mr. Trow :—*

11. The line described in your report runs through what is now the United States?—Yes.

12. It was not merely a direct due north line from the confluence of the Mississippi and Ohio, but a line northwardly, meaning a general divergence or bearing in that direction?—The word northward may certainly be construed in a northwardly direction, but going easterly or westerly.

13. Were not those terms so used?—That is more than I can say.

14. Have you not found it so in the examination of those papers?—No.

*By the Chairman :—*

15. East of the Mississippi, what would be the boundary?—The height of land. Assuming that the Mississippi was intended as the boundary to its source, and thence a due north line to the height of land—the latter would form the westerly and northerly boundaries of the Province of Ontario, and would take effect northerly and easterly of where the same is intersected by the International Boundary, a short distance west of Lake Superior.

*By Mr. Mousseau :—*

16. What portions of the Hudson's Bay territories are included in the award of 1878?—All the territory north and west of the height of land above described—extending to the Lake of the Woods and the Winnipeg River on the west; to the English River, the Albany River and the shores of James' Bay, on the north; and bounded by a line drawn due north from the head of Lake Temiscaming, on the east.

TUESDAY, 2nd March, 1880.

MR. RUSSELL, Surveyor-General, called and examined.

*By the Chairman :—*

17. Having regard to the Act of 1774, commonly known as the Quebec Act, and looking at the different rivers and boundary lines as set down on the map recently issued by the Government of Ontario, entitled "Map of part of North America designed to illustrate the official reports and discussions relating to the boundaries of the Province of Ontario," where would you consider the western boundary of the Province of Quebec, as constituted by that Act, to have been?

In interpreting the clause of the Quebec Act, which describes the boundary, I consider that there are two points of view from which the subject may be treated: first, what the describer intended to do; second, what he has actually done.

From the limited number of possibilities in this case, to select that intention which is the most probable, is a matter of judgment; what has been done in the description is a matter of fact.

The effect of the description is to make the western boundary of Ontario a line due north from the confluence of the Ohio and Mississippi Rivers.

The word "northward," though seemingly lacking in precision, is not really indefinite, and admits of no choice in its interpretation; for, corresponding to the assumption of any direction to one side of north, there is an equal and opposite possibility on the other side thereof, and the two are mutually destructive. Therefore, by exhaustive process, "northward," taken by itself, that is, without any conditioning or qualifying word or phrase, can mean nothing else than *north*. In the description under consideration, it stands unconditioned and unqualified.

If I were asked my opinion as to the intention of the describer, to affirm what he intended to do, not what he has done, I should still say that he meant due *north*.

When it is a question of his intent, I consider that, in endeavoring to interpret any certain word or expression used by him, due regard should be had to his own phraseology and use of words in the rest of the description; further, to the greater or less precision of thought, indicated throughout in his dealing with the vast circumstances and conditions of the boundary described.



Had it been his intention to define the boundary as extending northward along the banks of the Mississippi, that idea, I have no doubt, would have been clearly conveyed, for, in the several instances occurring previously in the description, where the same condition had to be expressed, there is no mistiness of definition. For example, he uses the words "thence along the eastern and south-eastern boundary of Lake Erie." Again, the words "following the same bank;" further on, immediately before using the word "northward," on the application of which so much turns, he employs, when speaking of the Ohio, the expression, "along the bank of the said river, westward;" this last affirmation being one to express a similar condition, with but a difference of direction, to that which would have obtained had he intended to say, "along the bank of the Mississippi northward."

That he should in one sentence so clearly state the special condition under which the boundary was to go "*westward*," and in the very next sentence, while intending to define an equally restrictive and equally important similar condition, should omit to use the least word or phrase to specify *how* the same boundary was to proceed "*northward*," I cannot conceive. I am, therefore, obliged to hold that by northward he meant north.

18. Mr. *Trow* asked, whether the word "northward" might not be held to apply to the extension generally of the territory in a northerly direction from its southern boundary, throughout its entire length in an eastern and western direction?—Such a word can be correctly used in surveying or geographical description, to imply the general extension in area, in any given direction from any given limit or boundary, all along such boundary, but in the case in point, the difficulty would still remain as to what should constitute the western limit of such general northerly extension.

19. Mr. *De Cosmos* asked—Am I to understand that you consider the boundary laid down on this map (pointing to a certain line on the map of the Province of Ontario on the table) the western boundary of Ontario?—I do, if that line is correctly drawn as the direct prolongation of a line due north from the confluence of the Ohio and Mississippi Rivers.

## COMMISSIONS.

21ST NOVEMBER, 1763.

JAMES MURRAY, ESQUIRE.—*Captain-General and Governor-in-Chief of the Province of Quebec.*

GEORGE THE THIRD, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, and so forth.

To our trusty and well-beloved James Murray, Esquire, greeting:

We, reposing especial trust and confidence in the prudence, courage and loyalty of you, the said James Murray, of Our especial grace, certain knowledge, and mere motion, have thought fit to constitute and appoint, and by these presents do constitute and appoint you, the said James Murray, to be Our Captain-General and Governor-in-Chief in and over Our Province of Quebec, in America; bounded on the Labrador coast by the River St. John, and from thence by a line drawn from the head of that river, through Lake St. John, to the south end of Lake Nipissing, from whence the said line crossing the River St. Lawrence and the Lake Champlain in forty-five degrees of northern latitude, passing along the highlands which divide the rivers that empty themselves into the said River St. Lawrence from those which fall into the sea; and also along the north coast of the Bay des Chaleurs and the coast of the Gulf of St. Lawrence to Cape Rosiers; and from thence crossing the mouth of the River St. Lawrence by the west end of the Island of Anticosti, terminates at the afore-said River St. John.



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19TH MARCH, 1764.

JAMES MURRAY, ESQUIRE.—*Vice Admiral, Commissary, &c., in Our Province of Quebec and territories thereon depending.*

GEORGE THE THIRD, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, &c.

To Our beloved James Murray, Esquire, Our Captain-General and Governor-in-Chief in and over Our Province of Quebec, in America, greeting:

We, confiding very much in your fidelity, care and circumspection in this behalf, do by these presents, which are to continue during Our pleasure only, constitute and depute you, the said James Murray, Esquire, Our Captain-General and Governor-in-Chief aforesaid, Our Vice-Admiral, Commissary, and Deputy in the office of Vice-Admiralty in Our Province of Quebec aforesaid, and territories thereon depending, and in the maritime parts of the same and thereto adjoining whatsoever, with power of taking and receiving all and every the fees, profits, advantages, emoluments, commodities and appurtenances whatsoever due and belonging to the said office of Vice-Admiral, Commissary, and Deputy, in Our said Province of Quebec, and territories depending thereon, and maritime parts of the same and adjoining to them whatsoever, according to the ordinances and statutes of Our High Court of Admiralty in England.

And We do hereby remit and grant unto you, the aforesaid James Murray, Esquire, Our power and authority in and throughout Our Province of Quebec aforementioned, and territories thereof, and maritime parts whatsoever of the same and thereto adjacent, and also throughout all and every the sea-shores, public streams, ports, fresh water rivers, creeks and arms as well of the sea as of the rivers and coasts whatsoever of Our said Province of Quebec, and territories dependent thereon, and maritime parts whatsoever of the same and thereto adjacent, as well within liberties and franchises as without.

[The expression "Our Province of Quebec and territories thereon depending," or "territories depending on the same," or "territories dependent thereon," occurs seven or eight times.]

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#### PROCLAMATION BY GENERAL GAGE TO THE FRENCH SETTLERS IN THE ILLINOIS, 1764.

[Captain Stirling was despatched in 1765 by General Gage to take possession of the posts and settlements of the French in Illinois country, east of the Mississippi. Upon his arrival, St. Ange surrendered Fort Chartres, and retired with the garrison of twenty-one men and a third of the inhabitants of that settlement to St. Louis, where he exercised the duties of commandant by the general consent of the people, till he was superseded by the Spanish Governor, Piernes, in 1770. Upon assuming the government of the country, Captain Stirling published the following proclamation from General Gage, who was at this time the Commander-in-Chief of the British forces in North America] :—

Whereas by the peace concluded at Paris, the tenth day of February, 1763, the country of Illinois has been ceded to His Britannic Majesty, and the taking possession of the said country of the Illinois by the troops of His Majesty, though delayed, has been determined upon: We have found it good to make known to the inhabitants—

That His Majesty grants to the inhabitants of the Illinois the liberty of the Catholic religion, as has already been granted to the subjects in Canada. He has consequently given the most precise and effective orders to the end that his new Roman Catholic subjects of the Illinois may exercise the worship of their religion according to the rites of the Romish Church, in the same manner as in Canada.

That His Majesty moreover agrees that the French inhabitants or others, who have been subjects of the Most Christian King, may retire in full safety and freedom wherever they please, even to New Orleans, or any part of Louisiana, although it should happen that the Spaniards take possession of it in the name of His Catholic Majesty, and they may sell their estates, provided it be to the subjects of His Majesty, and transport their effects as well as their persons, without restraint upon their emigration, under any pretence whatever, except in consequence of debts or of criminal processes.

That those who choose to retain their lands and become subjects of His Majesty, shall enjoy the same rights and privileges, the same security for the persons and effects, and the liberty of trade, as the old subjects of the King.

That they are commanded by these presents to take the oath of fidelity and obedience to His Majesty in presence of Sieur Sterling, Captain of the Highland Regiment, the bearer thereof, and furnished with our full powers for this purpose.

That we recommend forcibly to the inhabitants to conduct themselves like good and faithful subjects, avoiding, by a wise and prudent demeanor, all causes of complaint against them.

That they act in concert with His Majesty's officers, so that his troops may take possession of all the forts, and order be kept in the country. By this means alone they will spare His Majesty the necessity of recurring to force of arms, and will find themselves saved from the scourge of a bloody war, and of all the evils which a march of an army into their country would draw after it.

We direct that these presents be read, published, and posted up in the usual places.

Done and given at head-quarters, New York, signed with our hands, sealed with our seal at arms, and countersigned by Our Secretary, this 30th December, 1764.

THOMAS GAGE.

By His Excellency :  
G. MASTURIN.

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COMMISSIONS.

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7TH APRIL, 1766.

GUY CARLETON, ESQUIRE.—*Lieutenant-Governor of the "Province of Quebec in America."*

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25TH SEPTEMBER, 1766.

In Lieut.-Governor Carleton's appointment of Francis Maseres as Attorney-General, the attesting clause of the commission reads—

Witness Our trusty and well-beloved the Honorable Guy Carleton, Esquire, Our Lieutenant-Governor and Commander-in-Chief in and over Our said Province of Quebec, and the *territories depending thereon in America*, at Our Castle of St. Lewis, in Our City of Quebec, the twenty-fifth day of September, in the year of Our Lord one thousand seven hundred and sixty-six, and in the sixth year of our reign.

GUY CARLETON.

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12TH APRIL, 1768.

SIR GUY CARLETON—*Captain-General and Governor-in-Chief of the Province of Quebec.*

Our Province of Quebec, in America, bounded on the Labrador coast by the River Saint John, and from thence by a line drawn from the head of that river

through the Lake St. John to the south end of Lake Nipissim, from whence the said line, crossing the River St. Lawrence and the Lake Champlain in forty-five degrees northern latitude, passes along the high lands which divide the rivers that empty themselves into the said River St. Lawrence from those which fall into the sea, and also along the north coast of the Bay des Chaleurs and the coast of the Gulf of St. Lawrence to Cape Rosiers, and from thence crossing the mouth of the River St. Lawrence by the west end of the Island of Anticosti, terminates at the aforesaid River of St. John, together with all the rights, members and appurtenances whatsoever thereto belonging.

### THE QUEBEC ACT, 1774.

#### AN ACT FOR MAKING MORE EFFECTUAL PROVISION FOR THE GOVERNMENT OF THE PROVINCE OF QUEBEC IN NORTH AMERICA.

Whereas His Majesty, by His Royal Proclamation bearing date the seventh day of October, in the third year of His reign, thought fit to declare the provisions which have been made in respect to certain countries, territories, and islands in America, ceded to His Majesty by the definite Treaty of Peace concluded at Paris on the tenth day of February, one thousand seven hundred and sixty-three; and whereas by the arrangements made by the said Royal Proclamation, a very large extent of country, within which there were several colonies and settlements of the subjects of France, who claimed to remain therein under the faith of the said Treaty, was left without any provision being made for the administration of civil government therein; and certain parts of the territory of Canada, where sedentary fisheries had been established and carried on by the subjects of France, inhabitants of the said Province of Canada, under grants and concessions from the Government thereof, were annexed to the Government of Newfoundland, and thereby subject to regulations inconsistent with the nature of such fisheries: May it therefore please Your Most Excellent Majesty, that it may be enacted, and be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same.

That all the territories, islands and countries in North America, belonging to the Crown of Great Britain, bounded on the south by a line from the Bay of Chaleurs, along the high lands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the sea, to a point in forty-five degrees northern latitude, on the eastern bank of the River Connecticut, keeping the same latitude directly west, through the Lake Champlain, until, in the same latitude, it meets the River St. Lawrence; from thence up the eastern bank of the said river to the Lake Ontario; thence through the Lake Ontario and the river commonly called Niagara; and thence along by the eastern and south-eastern bank of Lake Erie, following the said bank until the same shall be intersected by the northern boundary granted by the charter of the Province of Pennsylvania, in case the same shall be so intersected; and from thence along the said northern and western boundaries of the said Province, until the said western boundary strike the Ohio; but in case the said bank of the said lake shall not be found to be so intersected, then following the said bank until it shall arrive at that point of the said bank which shall be nearest to the north-western angle of the said Province of Pennsylvania; and thence, by a right line, to the said north-western angle of the said Province; and thence along the western boundary of the said Province until it strike the River Ohio; and along the bank of the said river, *westward, to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchants Adventurers of England, trading to Hudson's Bay*; and also all such territories, islands and countries, which have, since the tenth day of February, one thousand seven hundred and sixty-three, been made part of the Government of Newfoundland, be, and they are hereby, during



His Majesty's pleasure, annexed to, and made part and parcel of the Province of Quebec as created and established by the said Royal Proclamation of the seventh day of October, one thousand seven hundred and sixty-three.

[Other sections omitted as not affecting the question.]

## COMMISSIONS.

27TH DECEMBER, 1774.

SIR GUY CARLETON—*Captain-General and Governor-in-Chief of the Province of Quebec*

And further know you, that we, reposing especial trust and confidence in the prudence, courage and loyalty of you, the said Guy Carleton, of our especial grace certain knowledge, and mere motion, have thought fit to constitute and appoint you the said Guy Carleton, to be our Captain-General and Governor-in-Chief in and over our Province of Quebec, in America, comprehending all our territories, islands and countries in North America, bounded on the south by a line from the Bay of Chaleurs along the high lands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the sea, to a point in forty-five degrees of northern latitude, on the eastern bank of the River Connecticut, keeping the same latitude directly west, through the Lake Champlain, until in the same latitude, it meets with the River Saint Lawrence; from thence up the eastern bank of the said river to the Lake Ontario, thence through the Lake Ontario, and the river commonly called Niagara, and thence along by the eastern and south-eastern bank of Lake Erie, following the said bank until the same shall be intersected by the northern boundary granted by the charter of the Province of Pennsylvania, in case the same shall be so intersected, and from thence along the said northern and western boundaries of the said Province, until the said western boundary strikes the Ohio; but in case the bank of the said lake shall not be found to be so intersected, then following the said bank until it shall arrive at that point of the said bank which shall be nearest to the north-western angle of the said Province of Pennsylvania, and thence by a right line to the said north-western angle of the said Province, and thence along the western boundary of the said Province until it strikes the River Ohio, and along the bank of the said river westward to the banks of the Mississippi, and northward along the eastern bank of the said river to the southern boundary of the territory granted to the Merchant Adventurers of England trading to Hudson's Bay; and also all such territories, islands and countries which have, since the tenth day of February, one thousand seven hundred and sixty-three, been made part of the Government of Newfoundland as aforesaid, together with all the rights, members and appurtenances whatsoever thereunto belonging.

17TH APRIL, 1775.

EDWARD ABBOTT, ESQUIRE—*Lieutenant-Governor and Superintendent of St. Vincenne*

GEORGE THE THIRD, by the Grace of God, of Great Britain, France and Ireland, King Defender of the Faith, &c.

To our trusty and well-beloved Edward Abbott, Esquire, greeting:

We, reposing especial trust and confidence in your loyalty, integrity and ability do, by these presents, constitute you and appoint you to be Lieutenant-Governor and Superintendent of the post established upon the River Wabache, heretofore called St Vincenne, in our Province of Quebec, in America, to have, hold, exercise, and enjoy the same from and after the first day of May next, during our pleasure, with all the rights, privileges, profits and perquisites to the same belonging or appertaining

and you are to obey such orders and directions as you shall from time to time receive from our Captain-General and Governor-in-Chief of our Province of Quebec, or from the Lieutenant-Governor or Commander-in-Chief of our said Province for the time being.

18TH SEPTEMBER, 1777.

SIR FREDERICK HALDIMAND—*Captain-General and Governor-in-Chief of the Province of Quebec.*

[This Commission contains Boundary Line descriptions similar to that of 27th December, 1774.]

## THE DEFINITIVE TREATY OF PEACE AND FRIENDSHIP.

BETWEEN HIS BRITANNIC MAJESTY AND THE UNITED STATES OF AMERICA. SIGNED AT PARIS, THE 3RD OF SEPTEMBER, 1783.

(Extracts.)

ARTICLE I.—His Britannic Majesty acknowledges the said United States, viz : New Hampshire, Massachusetts Bay, Rhode Island, and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, to be free, sovereign, and independent States; that he treats with them as such, and for himself, his heirs and successors, relinquishes all claims to the government, propriety, and territorial rights of the same, and every part thereof.

ARTICLE II.—And that all disputes which might arise in future on the subject of the boundaries of the said United States may be prevented, it is hereby agreed and declared, that the following are and shall be their boundaries, viz., from the north-west angle of Nova Scotia, viz., that angle which is formed by a line drawn due north, from the source of St. Croix River to the highlands, along the highlands which divide those rivers that empty themselves in the River St. Lawrence, from those which fall into the Atlantic Ocean, to the north-westernmost head of Connecticut River; thence down along the middle of that river to the forty-fifth degree of north latitude; from thence by a line due west on said latitude until it strikes the River Iroquois or Cataraquy; thence along the middle of said river into Lake Ontario, through the middle of said lake until it strikes the communication by water between that lake and Lake Erie; thence along the middle of said communication into Lake Erie; through the middle of said lake, until it arrives at the water communication between that lake and Lake Huron; thence along the middle of said water communication into the Lake Huron; thence through the middle of said lake to the water communication between that lake and Lake Superior; thence through Lake Superior, northward of the isles Royal and Phelippeaux, to the Long Lake; thence through the middle of said Long Lake, and the water communication between it and the Lake of the Woods, to the said Lake of the Woods; thence through the said lake to the most north-western point thereof, and from thence on a due west course to the River Mississippi; thence by a line to be drawn along the middle of the said River Mississippi until it shall intersect the northernmost part of the thirty-first degree of north latitude. South by a line to be drawn due east from the determination of the line last mentioned in the latitude of thirty-one degrees north of the equator, to the middle of the River Apalachicola or Catadouche; thence along the middle thereof to its junction with the Flint River; thence straight to the head of St. Mary's River, and thence down along the middle of St. Mary's River to the Atlantic Ocean. East

by a line to be drawn along the middle of the River St. Croix, from its mouth in the Bay of Fundy to its source, and from its source directly north to the aforesaid high lands, which divide the rivers that fall into the Atlantic Ocean from those which fall in the River St. Lawrence; comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one part and east Florida on the other, shall respectively touch the Bay of Fundy and the Atlantic Ocean; excepting such islands as now are, or heretofore have been, within the limits of the said Province of Nova Scotia.

22ND APRIL, 1786.

SIR GUY CARLETON, K.B. [afterwards Lord Dorchester]—*Captain-General and Governor-in-Chief of the Province of Quebec.*

And further know ye that we, reposing especial trust and confidence in the prudence, courage and loyalty of you, the said Sir Guy Carleton, of our especial grace, certain knowledge and mere motion, have thought fit to appoint you, the said Sir Guy Carleton, to be our Captain-General and Governor-in-Chief in and over our Province of Quebec, in America, comprehending all our Territories, Islands, and Countries in North America, bounded on the south by a line from the Bay of Chaleurs along the high lands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, to the north-westmost head of Connecticut River; thence down along the middle of that river to the forty fifth degree of north latitude; from thence by a line due west on said latitude until it strikes the River Iroquois or Cataraqui; thence along the middle of the said river into Lake Ontario; through the middle of said lake until it strikes the communication by water between that lake and Lake Erie; through the middle of said lake until it arrives at the water communication between that lake and Lake Huron; thence along the middle of said water communication into the Lake Huron; thence through the middle of said lake to the water communication between that lake and Lake Superior; thence through Lake Superior northward of the Isles Royal and Phillipeaux to the Long Lake; thence through the middle of said Long Lake and the water communication between it and the Lake of the Woods to the said Lake of the Woods; thence through the said lake to the most north-western point thereof, and from thence on a due west course to the River Mississippi; and northward to the southern boundary of the territory granted to the Merchants Adventurers of England, trading to Hudson's Bay; and also all such Territories, Islands, and Countries which have, since the tenth of February, one thousand seven hundred and sixty-three, been made part of the Government of Newfoundland, together with all the rights, members and appurtenances whatsoever thereunto belonging.

### THE CONSTITUTIONAL ACT, 1791.

AN ACT TO REPEAL CERTAIN PARTS OF AN ACT PASSED IN THE FOURTEENTH YEAR OF HER MAJESTY'S REIGN, ENTITLED AN ACT FOR MAKING MORE EFFECTUAL PROVISION FOR THE GOVERNMENT OF THE PROVINCE OF QUEBEC, IN NORTH AMERICA; AND TO MAKE FURTHER PROVISION FOR THE GOVERNMENT OF THE SAID PROVINCE.

Whereas an Act was passed in the fourteenth year of the reign of His present Majesty, entitled "An Act for making more effectual provision for the Government of the Province of Quebec, in North America," and whereas the said Act is in many respects inapplicable to the present condition and circumstances of the said Province and whereas it is expedient and necessary that further provision should now be made for the good government and prosperity thereof, may it therefore please your most Excellent Majesty that it may be enacted, and be it enacted by the King's most



Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled and by the authority of the same, that so much of the said Act as in any manner relates to the appointment of a Council for the affairs of the said Province of Quebec, or to the power given by the said Act to the said Council, or to the major part of them, to make ordinances for the peace, welfare, and good government of the said Province, with the consent of His Majesty's Governor, Lieutenant-Governor, or Commander-in-Chief for the time being, shall be and the same is hereby repealed.

II. And whereas His Majesty has been pleased to signify, by his message to both Houses of Parliament, his royal intention to divide his Province of Quebec into two separate Provinces, to be called the Province of Upper Canada and the Province of Lower Canada; be it enacted by the authority aforesaid, that there shall be within each of the said Provinces respectively, a Legislative Council, and an Assembly, to be severally composed and constituted in the manner hereinafter described; and that in each of the said Provinces respectively, His Majesty, his heirs or successors, shall have power, during the continuance of this Act, by and with the advice and consent of the Legislative Council and Assembly of such Provinces respectively, to make laws for the peace, welfare and good government thereof, such laws not being repugnant to this Act; and that all such laws, being passed by the Legislative Council and Assembly of either of the said Provinces respectively, and assented to by His Majesty, his heirs or successors, or assented to in His Majesty's name, by such person as His Majesty, his heirs or successors, shall from time to time appoint to be the Governor or Lieutenant-Governor of such Province, or by such person as His Majesty, his heirs or successors, shall from time to time appoint to administer the Government within the same, shall be, and the same are hereby declared to be, by virtue of and under the authority of this Act, valid and binding to all intents and purposes whatever, within the Province in which the same shall have been so passed.

[The other questions omitted as not affecting the question.]

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## ORDER IN COUNCIL, 24TH AUGUST, 1791, FOR THE DIVISION OF THE PROVINCE OF QUEBEC INTO THE PROVINCES OF UPPER AND LOWER CANADA.

(Copy obtained by the Government of Ontario from the Public Records Office, London.)

AT THE COURT AT ST. JAMES', THE 24TH OF AUGUST, 1791.

PRESENT :

The King's Most Excellent Majesty in Council.

Whereas there was this day read at the Board a Report from the Right Honble. the Lords of the Committee of Council, dated the 19th of this instant, in the words following, viz. :—

“ Your Majesty having been pleased by Your Order in Council, bearing date the 17th of this instant, to refer unto this Committee, a letter from the Right Honble. Henry Dundas, one of your Majesty's Principal Secretaries of State, to the Lord President of the Council, transmitting a printed copy of an Act passed in the last Session of Parliament, entitled an Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province; and also copy of a Paper presented to Parliament previous to the passing of the said Act, describing the line proposed to be drawn for dividing the Province of Quebec into two separate Provinces, agreeable to Your Majesty's royal intention, signified by

“message to both Houses of Parliament, to be called the Province of Upper Canada, and the Province of Lower Canada; and stating that by sec. 48 of the said Act, it is provided that by reason of the distance of the said Provinces from this country, and of the change to be made by the said Act in the Government thereof, it may be necessary that there should be some interval of time between the notification of the said Act to the said Provinces respectively, and the day of its commencement within the said Provinces respectively, and that it should be lawful for Your Majesty with the advice of your Privy Council, to fix and declare, or to authorize the Governor or Lieutenant-Governor of the Province of Quebec, or the person administering the Government there, to fix and declare the day of the commencement of the said Act within the said Provinces respectively, provided that such day shall not be later than the thirty-first day of December, one thousand seven hundred and ninety-one; the Lords of the Committee, in obedience to Your Majesty's said Order of Reference, this day took the said letter into their consideration, together with the Act of Parliament therein referred to, and likewise copy of the said paper describing the line proposed to be drawn for separating the Province of Upper Canada and the Province of Lower Canada; and their Lordships do thereupon agree humbly to report as their opinion to Your Majesty, that it may be advisable for Your Majesty, by Your Order in Council, to divide the Province of Quebec into two distinct Provinces, by separating the Province of Upper Canada and Province of Lower Canada, according to the said line of division described in the said paper; and the Lords of the Committee are further of opinion that it may be advisable for Your Majesty, by warrant under Your Royal Sign Manual, to authorize the Governor or Lieutenant-Governor of the Province of Quebec, or the person administering the Government there, to fix and declare such day for the commencement of the said before-mentioned Act, within the said two Provinces of Upper and Lower Canada respectively, as the Governor or Lieutenant Governor of the Province of Quebec, or the person administering the Government there, shall judge most advisable; provided that such day shall not be later than the thirty-first day of December in the present year, one thousand seven hundred and ninety-one.”

His Majesty this day took the said Report into His Royal consideration, and approving of what is therein proposed, was pleased, by and with the advice of His Privy Council, to order that the Province of Quebec be divided into two distinct Provinces, to be called the Province of Upper Canada and the Province of Lower Canada by separating the said two Provinces, according to the line of division inserted in said Order. And His Majesty is hereby further pleased to order that the Rt. Hon. Henry Dundas, one of His Majesty's principal Secretaries of State, do prepare a warrant to be passed under His Majesty's Royal Sign Manual, to authorize the Governor or Lieutenant-Governor of the Province of Quebec, or the person administering the Government there, to fix and declare such day as they shall judge most advisable, for the commencement, within the Province of Upper Canada and the Province of Lower Canada respectively, of the said Act passed in the last Session of Parliament, entitled “An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, intituled An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of said Province;” provided that such day, so to be fixed and declared for the commencement of the said Act, within the said two Provinces respectively, shall not be later than the thirty-first day of December, one thousand seven hundred and ninety-one.

STEPH. COTTRELL.

Endorsed,

Order in Council,  
24th August, 1791.

Ordering the division of the Province of Quebec into two Provinces, to be called the Province of Upper Canada and the Province of Lower Canada.



## COMMISSIONS.

12TH SEPTEMBER, 1791.

GUY, LORD DORCHESTER—*Captain-General and Governor-in-Chief of the Provinces of Upper Canada and Lower Canada.*

Greeting :

Whereas, We did by Our Letters Patent, under Our Great Seal of Great Britain, bearing date the twenty-second day of April, in the twenty-sixth year of Our Reign, constitute and appoint you, Guy, Lord Dorchester [then Sir Guy Carleton], to be our Captain-General and Governor-in-Chief in and over our Province of Quebec in America, comprehending all Our Territories, Islands and Countries in North America then bounded as in Our said recited Letters Patent was mentioned and expressed.

Now Know Ye, that we have revoked, determined, and by these presents do revoke and determine, the said recited Letters Patent, and every clause, article or thing therein contained.

And whereas, we have thought fit by Our order, made in Our Privy Council on the nineteenth day of August, one thousand seven hundred and ninety-one, to divide Our said Province of Quebec into two separate Provinces, to be called the Province of Upper Canada and the Province of Lower Canada, by a line to commence at a stone boundary on the north bank of the Lake St. Francis at the Cove west of the Pointe au Baudet, in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit to the direction of north thirty-four degrees west of the westernmost angle of the said Seigneurie of New Longueuil; thence along the north-western boundary of the Seigneurie of Vaudreuil, running north twenty-five degrees east, until it strikes the Ottawas River, to ascend the said river into the Lake Temmescanning, and from the head of the said lake by a line drawn due north until it strikes the boundary line of Hudson's Bay; the Province of Upper Canada to comprehend all such lands, territories and islands lying to the westward of the said line of division, as were part of Our said Province of Quebec, and the Province of Lower Canada to comprehend all such lands, territories and islands lying to the eastward of the said line of division, as were part of Our said Province of Quebec.

And whereas, by an Act passed in the present year of Our reign, intituled "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, intituled 'An Act for making more effectual provision for the Government of Quebec, in North America, and to make further provision for the Government of the said Province,'" further provision is hereby made for the good Government and prosperity of our said Provinces of Upper and Lower Canada.

Further Know Ye, that we, reposing especial trust and confidence in the prudence, courage and loyalty of you, the said Guy, Lord Dorchester, of Our special grace, certain knowledge and mere motion, have thought fit to constitute and appoint you, the said Guy, Lord Dorchester, to be Our Captain-General and Governor-in-Chief of Our said Province of Upper Canada, and of Our said Province of Lower Canada, respectively, bounded as hereinbefore described.

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EXTRACT from His Majesty's Instructions to His Excellency Lord Dorchester, dated at St. James', the 16th September, 1791, viz :—

1st. With these Our instructions, you will receive Our Commission under Our Great Seal of Great Britain, constituting you Our Captain-General and Governor-in-Chief in and over Our Provinces of Upper Canada and Lower Canada, *bounded as in our said Commission is particularly expressed.* In the execution, therefore, of so much of the Office and Trust we have reposed in you, as relates to Our Province of Lower Canada, you are to take upon you the Administration of the Government of the said



Province and to do and execute all things belonging to your command, according to the several powers and authorities of Our said Commission under Our Great Seal of Great Britain, and of the Act passed in the present year of Our Reign therein recited, and of these Our instructions to you, and according to such further Powers and Instructions as you shall at any time hereafter receive under Our Signet and Sign Manuals or by Our order in Our Privy Council.

2nd. *And you are with all due solemnity, before the Members of Our Executive Council, to cause Our said Commission to be read and published*, which being done, you shall then take, and also administer to each of the Members of Our said Executive Council, the oaths mentioned in an Act passed in the first year of His late Majesty King George the First.

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### PROCLAMATION OF 18TH NOVEMBER, 1791.

DECLARING WHEN THE CONSTITUTIONAL ACT SHALL HAVE EFFECT IN THE PROVINCES OF UPPER AND LOWER CANADA.

ALURED CLARKE :

GEORGE THE THIRD, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, and so forth.

To all our loving subjects whom these presents may concern, greeting :

Whereas we have thought fit, by and with the advice of our Privy Council, by Our Order in Council, dated in the month of August last, to order that our Province of Quebec should be divided into two distinct Provinces, to be called the Province of Upper Canada and the Province of Lower Canada, by separating the said two Provinces according to the following line of division, viz:—"To commence at a stone boundary on the north bank of the St. Francis, at the Cove west of the Pointe au Baudet, in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of north thirty-four degrees of west to the westernmost boundary of the Seigneurie of New Longueuil; thence along the north-western boundary of the Seigneurie of Vaudreuil, running north twenty-five degrees east until it strikes the Ottawa River, to ascend the said river into the Lake Temiscaming, and from the head of the said lake by a line drawn due north until it strikes the boundary line of Hudson's Bay, including all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada.

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### FURTHER BOUNDARY DESCRIPTIONS IN ENGLISH COMMISSIONS, 1794, 1838-9.

7th JUNE, 1794.

HENRY CALDWELL, ESQUIRE.—*Receiver-General of the Province of Lower Canada.*

Whereas we thought fit, by an Order made in our Privy Council on the nineteenth day of August, one thousand seven hundred and ninety-one, to divide our Province of Quebec into separate Provinces, to be called the Province of Upper Canada and the Province of Lower Canada, by a line to commence at a stone boundary on the north bank of Lake St. Francis, at the Cove west of Pointe au Baudet, in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of north, thirty-four degrees west, to the western-

most angle of the said Seigneurie of New Longueuil; thence along the north-western boundary of the Seigneurie of Vaudreuil, running north twenty-five degrees east, until it strikes the Ottawa River, to ascend the said river into the Lake Temiscaming, and from the head of the said lake, by a line drawn due north until it strikes the boundary line of Hudson's Bay; the Province of Upper Canada to comprehend all such lands, territories and islands lying to the westward of the said line of division as were part of our said Province of Quebec; and the Province of Lower Canada to comprehend all such lands, territories and islands lying to the eastward of the said line of division as were part of our said Province of Quebec.

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15th DECEMBER, 1796.

ROBERT PRESCOTT, ESQUIRE.—*Captain-General and Governor-in-Chief of the Provinces of Upper and Lower Canada.*

“Of Our Province of Upper Canada and of Our Province of Lower Canada, respectively, bounded by a line to commence at a stone boundary on the north bank of the Lake St. Francis, at the Cove west of Pointe au Baudet, in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of north, thirty-four degrees west, to the westernmost angle of the said Seigneurie of New Longueuil, thence along the north-western boundary of the Seigneurie of Vaudreuil, running north twenty-five degrees east, until it strikes the Ottawas River, to ascend the said river into the Lake Temiscaming, and from the head of the said lake by a line drawn due north until it strikes the boundary line of Hudson's Bay--the Province of Upper Canada to comprehend all such lands, territories and islands lying to the westward of the said line of division as were part of Our Province of Quebec; and the Province of Lower Canada to comprehend all such lands, territories and islands lying to the eastward of the said line of division as were part of Our said Province of Quebec.

[The following nine Commissions contain Boundary Line descriptions similar to that of 15th December, 1796.]

29TH AUGUST, 1807.

SIR JAMES HENRY CRAIG.—*Captain-General and Governor-in-Chief of the Province of Upper and Lower Canada.*

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21ST OCTOBER, 1811.

SIR GEORGE PREVOST.—*Captain-General and Governor-in-Chief of the Provinces of Upper and Lower Canada.*

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28TH DECEMBER, 1814.

GORDON DRUMMOND, ESQUIRE.—*Administrator of the Government of the Province of Upper and Lower Canada.*

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25TH MARCH, 1816.

SIR JOHN COAPE SHERBROOKE.—*Captain-General and Governor-in-Chief of the Provinces of Upper and Lower Canada.*

8TH MAY, 1818.

CHARLES, DUKE OF RICHMOND.—*Captain-General and Governor-in-Chief of the Provinces of Upper and Lower Canada.*

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12TH APRIL, 1820.

GEORGE, EARL OF DALHOUSIE.—*Captain-General and Governor-in-Chief of the Provinces of Upper and Lower Canada.*

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24TH NOVEMBER, 1830.

MATTHEW, LORD AYLMER.—*Captain-General and Governor-in-Chief of the Provinces of Upper and Lower Canada.*

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24TH NOVEMBER, 1830.

MATTHEW, LORD AYLMER.—*Captain-General and Governor-in-Chief of the Provinces of Upper and Lower Canada.*

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1st JULY, 1835.

ARCHIBALD, EARL OF GOSFORD.—*Captain-General and Governor-in-Chief of the Provinces of Upper and Lower Canada.*

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30th MARCH, 1838.

JOHN GEORGE, EARL OF DURHAM.—*Captain-General and Governor-in-Chief of the Provinces of Upper and Lower Canada.*

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Our said Province of Lower Canada; the said Province being bounded by the adjacent Province of Upper Canada, and the boundary line between the said Provinces commencing at a stone boundary on the north bank of Lake St. Francis, at the Cove west of the Point au Baudet, in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of north, thirty-four degrees west, to the westernmost angle of the said Seigneurie of New Longueuil; thence along the north-western boundary of the Seigneurie of Vaudreuil, running north, twenty-five degrees east, until it strikes the Ottawas River, to ascend the said river into the Lake Temiscaming; and which said Province of Lower Canada is also bounded by a line drawn due north from the head of the said lake until it strikes the shore of Hudson's Bay.

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30TH MARCH, 1838.

JOHN GEORGE, EARL OF DURHAM.—*Captain-General and Governor-in-Chief of the Province of Upper Canada.*

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Our said Province of Upper Canada; the said Province being bounded on the east by the line dividing that Province from Lower Canada, beginning at a stone boundary on the north bank of the Lake St. Francis, at the Cove west of the Point au Baudet in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of north, thirty-four degrees west to the westernmost angle of the said Seigneurie of New Longueuil, thence along the north western boundary of the Seigneurie of Vaudreuil, running north twenty-five degrees east until it strikes the Ottawa River, to ascend the said river into the Lake Temiscaming, the said Province of Upper Canada being also bounded by a line drawn due north from the head of the said lake until it reaches the shore of Hudson's Bay; the said Province of Upper Canada being bounded on the south, beginning at the said stone boundary between Lancaster and Longueuil, by the Lake St. Francis, the River St. Lawrence, the Lake of the Thousand Islands, Lake Ontario, the River Niagara, which falls into the Lake Erie, and along the middle of that lake on the west by the channel of Detroit, Lake St. Clair, up the River St. Clair, Lake Huron, the west shore of Drummond Island, that of St. Joseph and Sugar Island, thence into Lake Superior.

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13TH DECEMBER, 1838.

SIR JOHN COLBORNE.—*Captain-General and Governor-in-Chief of the Province of Upper Canada.*

Our Captain-General and Governor-in-Chief in and over Our said Province of Upper Canada, the said Province being bounded on the east by the line dividing that Province from Lower Canada, beginning at a stone boundary on the north bank of the Lake St. Francis, at the Cove west of the Point au Baudet, in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of north 34 degrees west to the westernmost angle of the said Seigneurie of New Longueuil, thence along the north-western boundary of the Seigneurie of Vaudreuil running north 25 degrees east, until it strikes the Ottawa River, to ascend the said river into the Lake Temiscaming; the said Province of Upper Canada being also bounded by a line drawn due north from the head of the said lake until it reaches the shore of Hudson's Bay; the said Province of Upper Canada being bounded on the south, beginning at the said stone boundary between Lancaster and New Longueuil, by the Lake St. Francis, the River St. Lawrence, the Lake of the Thousand Islands, Lake Ontario, the River Niagara, which falls into Lake Erie, and along the middle of that lake; on the west by the channel of Detroit, Lake St. Clair, up the River St. Clair, Lake Huron, the west shore of Drummond Island, that of Saint Joseph and Sugar Island, thence into Lake Superior.

[The following Commission contains Boundary Line descriptions similar to 30th March, 1838.]

6TH SEPTEMBER, 1839.

CHARLES POULETT THOMSON, ESQUIRE.—*Captain-General and Governor-in-Chief of the Province of Lower Canada.*

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29TH AUGUST, 1840.

CHARLES, BARON SYDENHAM.—*Captain-General and Governor-in-Chief of the Province of Canada.*

Our Province of Canada, comprising Upper Canada and Lower Canada, the former being bounded on the east by a line dividing it from Lower Canada, commencing at a stone boundary on the north bank of Lake St. Francis, at the Cove west of the Point au Beaudet, in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of north 34 degrees west to the westernmost angle of the said Seigneurie of Vandreuil, running north 25 degrees east until it strikes the Ottawa River, to ascend the said river into the Lake Temiscaming, by a line drawn due north from the head of the said lake until it reaches the shore of Hudson's Bay; and being bounded on the south, beginning at the said stone boundary between Lancaster and Longueuil, by the Lake St. Francis, the River St. Lawrence, the Lake of the Thousand Islands, Lake Ontario, the River Niagara, which falls (leads) into Lake Erie, and along the middle of that lake; on the west by the Channel of Detroit, Lake St. Clair, up the River Saint Clair, Lake Huron, the west shore of Drummond Island, that of St. Joseph and Sugar Island, thence into Lake Superior.

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[The two following Commissions contain Boundary Line descriptions similar to that of 29th August, 1840.]

24TH FEBRUARY, 1843.

SIR CHARLES THEOPHILUS METCALFE.—*Captain-General and Governor-in-Chief of the Province of Canada.*

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16TH MARCH, 1846.

CHARLES MURRAY, EARL CATHCART.—*Captain-General and Governor-in-Chief of the Province of Canada.*

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1ST OCTOBER, 1846.

JAMES, EARL OF ELGIN AND KINCARDINE.—*Captain-General and Governor-in-Chief of the Province of Canada.*

Our said Province of Canada, comprising Upper Canada and Lower Canada, the former being bounded on the east by the line dividing it from Lower Canada, commencing at a stone boundary on the north bank of the Lake St. Francis, at the Cove west of the Pointe au Beaudet, in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of north 34 degrees west, to the westernmost angle of the said Seigneurie of New Longueuil, thence along the north-western boundary of the Seigneurie of Vandreuil, running north 25 degrees east until it strikes the Ottawa River, to ascend the said river into the Lake Temiscaming, by a line drawn due north from the head of the said lake until it reaches the shore of Hudson's Bay; and being bounded on the south, beginning at the said stone boundary between Lancaster and Longueuil, by the Lake St. Francis, the River St. Lawrence, the Lake of the Thousand Islands, Lake Ontario, the River Niagara, Lake Erie, and along the middle of that lake: on

the west, by the Channel of Detroit, Lake St. Clair, up the River St. Clair, Lake Huron, the west shore of Drummond Island, that of St. Joseph and Sugar Island, thence into Lake Superior. The said Province of Lower Canada being bounded by the adjacent Province of Upper Canada, and the boundary line between the said two Provinces, commencing at a stone boundary on the north bank of the Lake St. Francis, at the Cove west of the Pointe au Beaudet, in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of north 34 degrees west, to the westernmost angle of the said Seigneurie of New Longueuil, thence along the north-western boundary of the Seigneurie of Vaudreuil, running north 25 degrees east until it strikes the Ottawa River, to ascend the said river into the Lake Temiscaming; and which said Province of Lower Canada is also bounded by a line drawn due north from the head of the said lake until it strikes the shore of the Hudson's Bay.

[The Commissions of Captains General and Governors-in-Chief, etc., subsequent to that of the Earl of Elgin and Kincardine, 1st October, 1845, contain no boundary line descriptions.]

WEDNESDAY, 3rd March, 1880.

The Committee met.

Hon. Mr. MILLS was called. On being asked to make a statement or *resumé* of the case, he replied that he had no statement to make beyond that which he had made in his reports. He had no further facts to disclose and believed the Committee was in possession of his views.

*By Mr. DeCosmos :—*

20. It is desirable to hear Mr. Mills on this point, namely, where is the western boundary of Ontario?—Well, before the award was made that was a matter of judgment.

21. Judgment belongs to almost everything a man can do. Instead of the Committee being obliged to wade through three volumes, questions on principal points in doubt could be put to Mr. Mills. In the preamble to the Act of 1803 it is stated: "whereas crimes and offences have been committed in the Indian territories and other parts of America not within the limits of the Provinces of Upper or Lower Canada, or either of them, or of the jurisdiction of any of the courts established in those Provinces, or within the limits of any civil Government of the United States, and are therefore not cognisable by any jurisdiction whatever, and by reason whereof great crimes and offences have gone and may hereafter go unpunished." In what section of the North-West Territories did the disturbances which occasioned the Act of 43 George III, 1803, occur?—I think they occurred on English River near Lake Athabaska or *Lac la Rouge*.

22. Was that the only place?—I think that was the principal place.

23. Do you mean Athabaska on the English River, tributary of the Winnipeg?—No; English River to which I refer lies far north of the Saskatchewan.

*By the Chairman :—*

24. That is on the tributary of the great Mackenzie River.

*By Mr. DeCosmos :—*

25. Did any disturbances give rise to this Act east of this river?—Not that I am aware of. There were disturbances at a later period in the Assiniboine district, and between that district and Lake Superior, as well as in the country to the north and west.

26. Please point out on that map (the Provincial map with the awarded territory marked) the locality of the English River?—It is not on this map; it lies far to the north.



27. It is west of Manitoba?—It is north-west, perhaps 1,000 miles.

28. Had any settlements been made there in 1803, at Athabaska?—Yes; it is a matter of history, which is open to the Committee for investigation, that Canadian and American traders were there in 1766, and the statement made by the elder Henry in his journal shows there had been traders there. We may assume that the Messrs. Frobishers, the two brothers, and Mr. Pond, who was afterwards employed to assist the Americans in fixing a boundary at the treaty of Versailles, with many others were also there before 1770.

29. At English River?—Yes; trading posts were established by them at Athabaska, and in that region, an account of which you will find in my report.

30. You are of opinion that the disturbances which occasioned the Act of 1803 occurred in the Athabaska country of the English River?—Yes.

31. Is it not generally supposed that the district where the traders were fighting lay between Lake Superior and Lake Winnipeg?—The disturbances to which you refer occurred many years after the passing of the Act of 1803; what the general suppositions may be, I cannot say.

*By the Chairman:—*

32. But the disturbances that occurred were some murders among French traders?—I am not aware of any contest that took place at these points, while the country was held by France, or at any time before the advent of Lord Selkirk. The Hudson Bay Company's traders, as far as I know, never left the shores of Hudson's Bay. Hearne is the first person represented in the journals of the Company as ever having left the shores of the bay. The French, long before the cession, intercepted the traders by establishing trading posts in the interior, which induced the Indians to come to their posts instead of going to Hudson's Bay.

33. What disturbances occurred before 1803?—There was the shooting of a Mr. Woden, a Swiss trader, by Mr. Pond, in 1780, and one or two other cases of violence in the Athabaska District. That was years before the Hudson's Bay Company went into those south west districts at all. The crimes referred to grew out of conflicts between the X. Y. Company and the North-West Company. They united in 1803, and then this Act was passed.

*By Mr. DeCosmos:—*

34. In the Act of 1821, in the preamble, we find the words: Animosities and feuds arising from such competition have also, for some years past, kept the interior of America to the northward and westward of the Provinces of Upper and Lower Canada, and of the Territories of the United States, in a state of continued disturbance. Please to locate those feuds and animosities?—The Committee can do that from the facts given as well as I. As they were very numerous their location would be a matter of opinion. I am not aware what the particular views of those gentlemen were who framed the Act, or of Parliament that passed it; but I think the history of that period shows those disturbances and difficulties existed between the Hudson's Bay Company and the traders of the North-West Company after Lord Selkirk went there, never before. You will find from Daniel Harrison's journal, that the North-West Company extended their trading posts, away westward throughout British Columbia, and down to the 42° parallel of north latitude, into what is now California. Difficulties occurred between these two companies over the entire territory through which they operated; for the Hudson's Bay Company followed the other in their fur trade. The letters of the North-West Company were seized by the Hudson's Bay Company at various posts. Troops were brought from the Orkney Islands to Lake Athabaska by the Hudson's Bay Company in 1774, but not used before Lord Selkirk's day, against their rivals. The fact, I think, is mentioned in my report or the appendix which accompanies it. Over the entire country, there were conflicts between those two companies after 1817. Those conflicts continued until the two companies were amalgamated; some of them occurred in United States Territory.

*By the Chairman :—*

35. In your works, do you refer to the disturbances which occurred in the country intervening between Lake Superior and what is now Manitoba. It is known that in 1817, and I think you refer to it in your first work, that the Hudson Bay Co's Governor, and also of the Colony of Selkirk, was killed with 17 of his followers?—Governor Semple was killed in the vicinity of the present City of Winnipeg. In my report I refer to other disturbances. It was not those which occurred within Upper Canada that rendered the Act necessary.

36. This murder took place in the country intervening between Lake Superior and Manitoba. Lord Selkirk had called in a regiment of soldiers and they carried on war in this country, between Lake Superior and what is now known as Manitoba or Winnipeg. Is it not highly probable, and, in fact, evident, that this Act of 1821 was passed to provide a means of maintaining order where these disturbances occurred?—That is a matter of opinion, not a matter of fact. There were other acts of violence in other districts. I have my views, but, as it is a matter of opinion, it is of no consequence to give it. If the boundary of Ontario is further West, the answer must be, no.

37. *Mr. Robinson :—*The Act was passed in reference to these occurrences shortly after the trials took place.

38. *The Chairman :—*Some of the trials were still pending. The Act was passed in 1821.

*Mr. Mills :—*The trials at Toronto took place in 1817, and at Quebec in 1818. There had been arrests made, and war was going on in the country, between Fort William on Lake Superior and the Rocky Mountains. Some of these conflicts were within the United States. The Judge who sat in the cases tried at Toronto, and the Judges who sat at Quebec, expressed entirely different opinions in reference to the question of the boundary of the Province. The conflicts were very numerous. The debate, if any, on this Act was never reported. I shall not give conjectures as testimony.

*By Mr. Brecken :—*

39. Was that case tried in both Provinces?—They were different cases. The parties tried at Toronto were charged with murder committed further west, and about which there could be no doubt as to the origin of the jurisdiction, if the rule laid down in the Reinhardt case had been the view of the Court.

*By Mr. DeCosmos :—*

40. The case is reported in those works?—Yes. I have never looked carefully through this appendix to know how many of the papers, referred to in the report, are included. Whether the Toronto case is included or not, I can not say. However, it is reported, and will be found in a volume in the library.

*By Mr. Mousseau :—*

41. What was the position taken by the Toronto Judges as to the question of jurisdiction?—That there was no limit to the boundary of Upper Canada on the west.

*By the Chairman :—*

42. Was it not that if Ontario extended that far west, they had jurisdiction; and if not, they had also jurisdiction. In the one case because it was within the Province, and in the other because the Act of 1803 gave them jurisdiction beyond the boundaries of Upper Canada. It was just what I have stated it to be.

*By Mr. Royal :—*

43. Were you not acting as the paid Agent of Ontario in producing these works?—Yes, I would hardly have taken the trouble of visiting public libraries in the United States and Canada, collecting evidence and employing parties to write out the documents of which I wanted transcripts, at my own expense; but my instructions from the Ontario Government were to investigate the subject and report to them my opinion as to where the true boundary of the Province was upon the north and west. I had no instructions to find the western boundary at this place, and the northern boundary at another fixed place. I was put exactly in the position of a discoverer, to enquire into the facts and to inform the Government where the wes-



tern and northern boundary are. I did so, and I reported my conclusions, and those are before the Committee. I would further remind the Committee that I am not here on behalf of Ontario, nor at her instance. I am here by summons from the Committee, and would have preferred not to have been here at all.

*By Mr. Mousseau :—*

44. Were you under instructions similar to those given to Judge Ramsay ?—I was under no instructions beyond the fact that I was to investigate the subject fully and report my conclusions.

*By Mr. Royal :—*

45. By the Treaty of Paris, 10th February, 1763, Canada was ceded by France to England. About eight months afterwards, on the 7th October, 1763, the four Provinces were established by the King's Proclamation in the territories ceded. About 15 years afterwards, on the 3rd September, 1783, took place the Treaty of Paris between the United States and England, by which the boundary between the American States and Canada was established. Now, the next thing is, by the Quebec Act of 1774 a Constitution was given the Province of Quebec and new limits established for that Province, as declared by the Proclamation of 1763. Do you consider that Ontario goes west of the western portion of Quebec as constituted by the Quebec Act ?—That is a matter of opinion—a question of law—not of fact.

46. Well, as you have studied this question ?—Well, I have nothing to add to what is stated in my report.

47. As the desire was expressed, would you be kind enough to give us a synopsis, a condensation of your report so as to save time, that is the object of my question ?—I would prefer not to answer anything beyond any question of fact you may ask me. I was in here yesterday while the investigation was being conducted, and I heard questions put with regard to the construction of certain portions of the Quebec Act that, in my opinion, with a very slight cross-examination based upon a more intimate acquaintance with the subject, would lead to an entirely different result and convey a wholly different opinion from that which was conveyed by the statements made. Any summary statement on my part might convey an erroneous impression to the Committee. Besides, the report is but a brief summary of the facts. If I were to give an opinion, I would say that before an intelligible enquiry can be made with regard to those matters to which you refer there are certain preliminary facts, if I may so call them, that are of very great importance. They are indispensable to a proper interpretation of those various public documents, which ought to be examined by the Committee. A consideration of the previous condition of things, and the policy that the Imperial Government had in view when they established, by the Proclamation of October, 1763, the Province of Quebec; the various projects that were submitted to them by distinguished colonists and by leading statesmen in England, the conflicting opinions entertained by those who for short intervals of time governed the country during that period, and the final determination of the Government immediately before the passage of the Quebec Act—a consideration of all those, it seems to me, is necessary to a proper understanding of the Act itself. These I have endeavored to set out concisely in my second report, and I do not know that any statement I could make to the Committee would be any clearer or more brief than the statement there given. I think the Committee will find, not simply by referring to the report, but also by referring to the various documents mentioned in the report—many of which are given in the appendix—that the Government had before it, for some years, the propriety of establishing three other colonies, one with Detroit for its centre, another with Pittsburg for its centre, and another in the Illinois country; that Lord Shelburne favored this view, that General Conway and several other English statesmen also favored it; that Mr. Franklin pressed the subject on the attention of the Government; that Lord Hillsborough and his friends in the Board of Trade were determinedly hostile to the western extension of the English Colonies, or to the establishment of new ones, as being inimical to British interests; that ultimately the views of those who wished to exclude the English altogether from the west side of the Alleghany Mountains, prevailed in the Government; that in ac-



cordance with those views the proclamation of 1763 was issued ; that a boundary line was laid down in that proclamation and an effort made from that time until 1768 to prevent English settlers crossing the Alleghany Mountains, and from going into the Indian territory ; that notwithstanding those efforts, they did so, some 20,000 having crossed from the State of Pennsylvania alone ; that their settlement in the Indian country, on lands not surrendered was rapidly involving the whole country in a second Indian war, and the deputy Indian agent, Mr. Croghan, was sent home to the Imperial Government to secure its consent to the surrender of that territory, and an alteration in the boundaries fixed by the Proclamation of 1763. This matter was discussed in England, and Mr. Johnson, the Indian agent for the northern department, was authorised to negotiate a treaty with the Indians. I will say here, that before 1754, each province had an Indian agent of its own. But in 1754, before the seven years' war, and with a view of resisting the encroachments of the French who had settled down the valley of the Ohio, and established military trading posts across the continent from Lake Erie to the Gulf of Mexico—the English with a view to strengthen their position in North America, made an attempt to confederate the whole of the Provinces, and a meeting was held in Albany to discuss the question. With the view of preparing the country for Confederation, the whole control of the Indian matters was taken out of the hands of the provinces, and placed in the hands of two agents, one called the agent of the northern and the other of the southern department. Mr. Johnson, as I have said, was the agent of the northern department. On account of the settlement beyond the line fixed in the proclamation of 1763, a treaty was made called the treaty of Fort Stanwix, and you will find in my first report a map showing where the boundary line in that treaty was laid down. The policy of the English then was to promote the surrender of the country west of the Alleghany Mountains as far as the Ohio River, and there make a stand against further colonization, similar to the stand intended to be taken at the Alleghanies by the proclamation of 1763. No settlers were allowed to go west of that ; and in order to accomplish that object, they concluded to embrace the whole of that section of the country that had been ceded by the French as far west as the Mississippi River, in the Province of Quebec. A Bill was introduced in the House of Lords for that purpose. One object was to exclude the English traders from going into the Indian country altogether, because it was believed they would, if they went in, make settlements there. When the Quebec Act was introduced it was for the purpose of annexing the country westward to the Mississippi. The statement in the Act introduced in the House of Lords, was all that country extending southward to the Ohio, westward to the Mississippi and northward to the Hudson Bay Company's Territory shall be included and annexed to the Province of Quebec. Then I would just say, at this point, that if the words northward and southward were used without qualifying words meant due north and due south, then all the country between the old Province of Quebec and a line drawn due north from the eastern extremity of the Ohio River would not have been embraced in any Province at all ; that there would have been a large section of the country separating the old Province of Quebec, established by proclamation, from the territory that would have been annexed, and the Committee may consider this fact as having some bearing on the construction of the Act. The statement in the Act shows that in all these cases the establishment of the boundaries of a Province was the prerogative right of the King. He could alter or amend them, and there were various ways in which this power was exercised by the Crown.

*By Mr. DeCosmos :—*

48. Aside from the Statute?—It was not a statutory power at all. In every case when Parliament undertook to mention boundaries it always reserved the King's prerogative. The King sometimes exercised this prerogative by proclamation, sometimes by Order in Council, and it may be sometimes by commission to the Governors, and sometimes by Royal instructions.

49. Then he can extend or diminish them?—Yes ; by proclamation or Order in Council.

50. It is a prerogative right?—Yes; in the old colonies of Virginia and Massachusetts, and other Royal or Charter Governments, the boundaries were extended indefinitely westward to the South Sea by charters; but when the King made his treaty with France, in the exercise of this prerogative, he limited those boundaries.

*By the Chairman:—*

51. Then the King had the power of extending or curtailing the limits?—Certainly. To what extent his power in these matters was controlled by Parliament I am not disposed to discuss before the Committee. It is a question upon which I may have something to say in the House on the second reading of my bill. As a matter of fact, the King did so exercise his powers; he exercised his prerogative by the proclamation of 1763, by which he limited the boundaries of the Province to the Mississippi River, which he had previously extended to the South Sea. He exercised that prerogative in the proclamation by establishing four new Provinces of which Quebec was one. In 1774 when Parliament commenced legislation, and it is the first instance in the history of the colonies, of Parliament undertaking to deal with colonial constitutions or interfering with the power previously exercised by the Crown—these words were inserted in the Act: “And also such territories, islands and countries, which have, since the tenth day of February, 1763, been made part of the Government of Newfoundland, and they are hereby, during His Majesty’s pleasure, annexed to and made part and parcel of the Province of Quebec, as created and established by the said Royal Proclamation of the 7th October, 1763.” This Act did not undertake to control the power of the Crown as to boundaries, or to lay down boundaries that the King might not subsequently alter in the usual way if he thought proper. They were established only during the King’s pleasure. In the Act of 1791, there was no attempt to control the King’s prerogative. If the Committee will look at the map of the Treaty of Fort Stanwix they will see the boundary laid down between the Indian possessions, practically changed the boundaries of Virginia, as fixed by the Order in Council. By that treaty a large section of country was taken off the western part of New York and secured to the Indians of the Six Nations. The Committee will see, also, that there is a large section of country, wholly east of the meridian line, drawn due north from the eastern extremity of the Ohio River, separating by some hundreds of miles on the southern side, the Province of Quebec, under the proclamation of 1763, from the territories that are hereby declared to be annexed; yet it cannot be supposed that the Government did not intend to embrace the whole country from the western border of the Province to the Mississippi.

52. By the Act of 1774?—By the Act as it was introduced into the House of Lords. Suppose the Act had been carried as it was introduced in the House of Lords, and no alteration had taken place in that Act; suppose the whole of the territories, countries and islands extending southward to the banks of the River Ohio, westward to the banks of the Mississippi, and northward to the southern boundary of the Hudson Bay Company’s territory, had been annexed to the Province of Quebec, would the words northward and southward have given to them a meaning that would leave a large section of country east of the meridian line drawn north from the eastern extremity of the Ohio, not included in the new Province? It will be seen from the map to which I have referred, that the object of Mr. Burk, in laying down the boundary on the south, was to prevent the western section of New York, which was then separated from the portion of the Province open for settlement and set apart as a portion of the possessions of the Six Nations, from being embraced in Quebec. It was stated in the correspondence between the State of New York—then the Colony of New York—and its agent, that such was the intention of Ministers. The southern boundary was laid down throughout its whole extent, and by the words of the statute it is declared that all the territories, islands and countries in North America, belonging to the Crown of Great Britain, bounded on the south by a line extending from the Bay of Chaleurs westward to the banks of the Mississippi and northward, &c. The Committee will see that the word northward cannot apply to a due north boundary, because it would not make sense. If applied to a line, it would be sheer nonsense to say that all the countries, territories and islands, bounded on the south



by a line extending to the banks of the Mississippi northward, meant bounded on the south by a line extending due north. The country west of the meridian of the junction of the Ohio and Mississippi to Lake Itasca, is bounded on the south by the Mississippi, that is, on the south by a line at first extending westward and then northward. But in my report I have shown that the word "northward" does not apply to a line at all, but to the territories, countries and islands; otherwise you have no northern boundary given.

*By the Chairman :—*

53. The description was northward to the southern boundary of the territories of the Hudson's Bay Company; would not the line then have passed up along the Mississippi, far to the westward of the territories which the Act provided it should strike, which were in fact the objective point? I do not think the Mississippi, as then understood, is the Mississippi as marked down on Mitchell's map?—The Mississippi on all the maps, I have given, has been deflected greatly to the westward; and it will be seen that, in almost all cases, this is simply because the longitude was not well known. The Lakes Manitoba and Winnipeg are placed very much too far west on all the old maps, as compared with the southern part of the Mississippi, and the upper part of the Mississippi was turned westward to place it relatively right. On some of the maps the St. Peter's or Minnesota is marked as the principal river.

*By Mr. DeCosmos :—*

54. Are you aware of the difference of longitude between the date of which you spoke and the longitude as determined now?—The maps in my first report, if compared with modern maps will show.

*By Mr. Trow :—*

55. Where did the Act of 1774 place the western boundary?—The object stated in the preamble of this Bill is: "Whereas by the arrangements made by the said proclamation, a very large extent of country within which there are several colonies and settlements of the subjects of France, who claimed to remain therein under the faith of the said treaty, was left without any provision being made for the administration of civil government therein," etc. Four-fifths of these settlements were on the Mississippi River.

*By the Chairman :—*

56. In the papers referred to you speak of a settlement about Detroit?—I referred to them all. There was a settlement at Detroit and there were settlements upon the Wabash River, but the whole correspondence that took place prior to the introduction of the Quebec Act by the Government shows that the principal settlements were on the Mississippi River. Lieutenant Pitman, an English officer, was appointed to take the census of all those places before the Act was passed. It was on that census the Government acted. It showed that settlements were established along the Mississippi River, and that to run a boundary due north would be running a boundary that would exclude the settlements, which both Ministers and Parliament declared they intended to include.

*By Mr. DeCosmos :—*

57. The English wished to have the right to navigate the Mississippi to its mouth?—They had the right of navigation to its mouth by the Treaty of 1763; and they wished, as far south as the junction of the Mississippi and the Ohio, to place the entire right of navigating the river by British subjects under the control of the Quebec Government; so that they might exclude the fur traders of the other colonies from going into this annexed country. I have referred to State papers in my report showing this to be the case, to which I refer the Committee.

*By Mr. Mousseau :—*

58. You think the Act extended the Province to the Mississippi?—The Act was founded on grounds of public policy; it was introduced to further that public policy which is as clearly disclosed in the State papers of the period as any fact can be. What Ministers understood, we know; what they believed they had done, we know; what all the colonies believed had been done, we know; but this Committee may hold they were all mistaken. I may further observe that subsequently, when



the United States obtained their independence, and a boundary was agreed upon, the southern part of the Province was cast off, and given to the United States. New commissions were issued in strict accordance with the interpretation of the law in the old commissions, and the new boundary was again carried to the Mississippi,—the supposing that the Mississippi rose within the boundary agreed upon. In all this the Crown assumed the Mississippi to be the western boundary, and the Crown could fix the boundary where it pleased.

*By the Chairman:—*

59. Can you show us by the map which was called the Mississippi?—I have no doubt whatever on that point, from the fact that the Americans and the English had Mitchell's map before them. It was the river so-called on that map. You will see by Adams and Joy's correspondence that the Americans were very much afraid that the Spaniards would refuse to them the liberty to navigate that portion of the Mississippi which flows through Louisiana; they knew that if England had no interest in the navigation of the Mississippi, she would have no interest in asserting the right which she had under the Treaty of 1763. Adams says: "We have extended the boundary sufficiently far south to strike the Mississippi River, so that the English, owning the country on the Upper Mississippi will have a common interest with ourselves in keeping the navigation of the river open through the Spanish portion of the territory." It is therefore perfectly clear they believed the boundary would strike the Mississippi.

60. That is very far west of the Lake of the Woods?—Not as they supposed the features of the country to be from Mitchell's map.

61. White Mud River?—I don't think that boundary is the one that was contemplated. That river is a branch of the Missouri which at no time was ever confounded with the Mississippi. Mitchell's map was the only map the Commissioners had before them, and Mitchell's map at that period represented the Mississippi rising north of the present boundary. Let me call the attention of the Committee to the reasons for establishing the Province of Upper Canada. The Americans at the time had organized under the articles of Confederation. The Central Government had the same power as it now has, but it had no proper executive or administrative authority to enforce its determinations on refractory States. The States refused to execute the mandates of the Central Government, and there was every appearance before the adoption of the Constitution, of the Government of the United States going to pieces. The British Minister at Washington, at that time, Mr. Hammon wrote to Sir Henry Dundas that there was a possibility of the United States Government being broken up. The people of Western Virginia, who had demanded separate Government, informed Lord Dorchester that unless their own Government secured to them the free navigation of the Mississippi, they were disposed again to become colonists of Great Britain. A correspondence was opened and there was every probability of that section of the country south of the Ohio and west of the mountains, being again acquired by the English. The English Government was then disposed to repudiate the boundary agreed upon by the Treaty of 1783. The said to the American Minister, Mr. Adams, through Lord Caermarthen:—"You have not kept faith with us. You agreed to permit the refugee United States Loyalists to return to the various States to collect their debts. Your States have passed laws prohibiting these people from returning and confiscating the amounts due them to the State. You have not kept faith with us, and you cannot call upon us to respect the treaty when you have not observed it yourselves." The English Government knew that all classes in the old colonies had a strong feeling of repugnance against the system of Government provided by the Quebec Act, and the proposed division had in view not merely a new Province formed from Western Quebec after the Treaty of 1773, but a new Province into which their old colonists might immigrate embracing all the British territory to the west of and south-west of Lower Canada and contemplating acquisitions from Spain beyond the Mississippi River, and from the United States between the Lakes and the Alleghany Mountains. The English continued to hold military posts at Niagara, Presqu'île, Oswego, Detroit, and Mac

inaw, and they built additional forts. The correspondence shows that before the Province of Quebec was divided, the intention was to regain that section of the Province of Quebec that had been ceded to the United States.

*By Mr. De Cosmos :—*

62. That is the territory of North of the Ohio?—Yes; Lord Dorchester addressed the Indians under Brant, telling them the treaty was repudiated, that they were not to enter into any negotiations with the authorities of the United States for the surrender of their country, that there was no longer any boundary between Great Britain and the United States. When the Act of 1791 was passed, it declared the King intended to divide the Province of Quebec, but it does not divide it. It no more interferes with the King's prerogative to alter Provincial boundaries than the Act of 1774. Mr. Clarke's proclamation says "Upper Canada shall include all the countries, territories and islands to the southward and westward of the dividing line to the utmost extent of what was known as Canada,"—not of what was known as Quebec.

*By the Chairman :—*

63. Does the Order in Council say that?—The proclamation says that, and the use of the word "Canada," in the proclamation shows, in my opinion, what the policy of the Government was on the question. By the Order in Council of 1791, which will be found on pages 338-9 of the appendix to my report, it will be found that a division is authorized, but that no division of the Province is made; that division authorized by the King's warrant was made by the proclamation referred to; and that proclamation above gives the boundaries of Upper Canada.

*Mr. Royal*—No, it does not appear to me that the proclamation, considered in connection with the Order in Council, and instructions issued under it would bear any such interpretation. Would the Chairman please to read the Order in Council and the instructions to Lord Dorchester issued under it.

*The Chairman*—The Order in Council to which you refer is as follows:

"At the Court of St. James, the 24th of August, 1791—

PRESENT:

The King's most Excellent Majesty in Council.

Whereas there was this day read, at the Board, a report from the Right Hon. the Lords of the Committee of Council, dated the 19th of this instant, in the words following, viz.:

"Your Majesty having been pleased, by your Order in Council, bearing date the 17th of this instant, to refer unto this Committee, a letter from the Right Honorable Henry Dundas, one of your Majesty's principal Secretaries of State, to the Lord President of the Council, transmitting a printed copy of an Act passed in the last session of Parliament, entitled An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled An Act for making more effectual provision for the Government of the Province of Quebec in North America, and to make further provision for the Government of the said Province; and also copy of a paper presented to Parliament previous to the passing of the said Act, describing the line proposed to be drawn for dividing the Province of Quebec into two separate Provinces, agreeable to your Majesty's Royal intention, signified by message to both Houses of Parliament, to be called the Province of Upper Canada and the Province of Lower Canada; and stating that, by sec. 48 of the said Act, it is provided that, by reason of the distance of the said Provinces from this country, and of the change to be made, by the said Act, in the Government thereof, it may be necessary that there should be some interval of time between the notification of the said Act to the said Provinces respectively, and the day of its commencement within the said Provinces respectively, and that it should be lawful for your Majesty, with the advice of your Privy Council, to fix and declare, or to authorize the Governor or Lieutenant Governor of the Province of Quebec, or the person administering the Government



there, to fix and declare the day of the commencement of the said Act within the said Provinces respectively, provided that such day be not later than the thirty-first day of December, one thousand seven hundred and ninety-one; the Lords of the Committee, in obedience to your Majesty's said Order of Reference, this day took the said letter into their consideration, together with the Act of Parliament there referred to, and likewise copy of the said paper, describing the line proposed to be drawn for separating the Province of Upper Canada and the Province of Lower Canada; and their Lordships do thereupon agree humbly to report, as their opinion is to your Majesty, that it may be advisable for your Majesty, by your Order in Council, to divide the Province of Quebec into two distinct Provinces, by separating the Province of Upper Canada and Province of Lower Canada, according to the said line or division described in the said paper; and the Lords of the Committee are further of opinion, that it may be advisable for your Majesty, by warrant under your Royal Sign Manual, to authorize the Governor or Lieutenant-Governor of the Province of Quebec, or the person administering the Government there, to fix and declare such day for the commencement of the said before-mentioned Act, within the said two Provinces of Upper and Lower Canada respectively, as the said Governor or Lieutenant Governor of the Province of Quebec, or the person administering the Government there, shall judge most advisable; provided that such day shall not be later than the thirty-first day of December in the present year, one thousand seven hundred and ninety-one."

His Majesty this day took the said Report into His Royal consideration, and approving of what is therein proposed, was pleased, by and with the advice of His Privy Council, to order that the Province of Quebec be divided into two distinct Provinces, to be called the Province of Upper Canada and the Province of Lower Canada by separating the said two Provinces according to the line of division inserted in said order; and His Majesty is hereby further pleased to order that the Right Honorable Henry Dundas, one of His Majesty's principal Secretaries of State, prepare a Warrant to be passed under His Majesty's Royal Sign Manual, to authorize the Governor or Lieutenant-Governor of the Province of Quebec, or the person administering the Government there, to fix and declare such day as they shall judge most advisable for the commencement within the Province of Upper Canada and the Province of Lower Canada respectively, of the said Act passed in the last session of Parliament, entitled "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, intituled An Act for making more effectual provision for the Government of the Province of Quebec in North America, and to make further provision for the Government of the said Province," provided that such day so to be fixed and declared for the commencement of the said Act within the said two Provinces respectively shall not be later than the twenty-first day of December, one thousand seven hundred and ninety-one. •

STEPHEN COTTRELL.

Endorsed,

Order in Council, 24th August, 1791.

Ordering the division of the Province of Quebec into two Provinces, to be called the Province of Upper Canada and the Province of Lower Canada."

The instructions to Lord Dorchester are dated 12th September, following, these I shall now read :

"12th September, 1791.

GUY, LORD DORCHESTER, Captain-General and Governor-in-Chief of the Province of Upper Canada and Lower Canada.

GREETING:—

Whereas we did, by our letters patent, under our Great Seal of Great Britain, bearing date the 22nd day of April, in the twenty-sixth year of our reign, consti-



and appoint you, Guy, Lord Dorchester (then Sir Guy Carleton) to be our Captain-General and Governor-in-Chief, in and over our Province of Quebec in America, comprehending all our territories, islands and countries in North America, then bounded as in our said recited letters patent was mentioned and expressed.

Now know ye, that we have revoked, determined, and by these presents do revoke and determine the said recited letters patent, and every clause, article or thing therein contained.

And whereas we have thought fit, by our order, made in our Privy Council, the nineteenth day of August, one thousand seven hundred and ninety-one, to divide our said Province of Quebec into two separate Provinces, to be called the Province of Upper Canada and the Province of Lower Canada, by a line to commence at a stone boundary on the north bank of the Lake St. Francis, at the Cove west of the Point au Baudet, in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit to the direction of north thirty-four degrees, west to the western angle of the said Seigneurie of New Longueuil; thence along the north-western boundary of the Seigneurie of Vaudreuil, running north twenty-five degrees east until it strikes the Ottawas River, to ascend the said river into the Lake Temiscaming, and from the head of the said lake by a line drawn due north until it strikes the boundary line of Hudson's Bay; the Province of Upper Canada to comprehend all such lands, territories and islands, lying to the westward of the said line of division, as were part of our said Province of Quebec; and the Province of Lower Canada to comprehend all such lands, territories, and islands lying to the eastward of the said line of division, as were part of our said Province of Quebec."

There are also further instructions to Lord Dorchester, dated at St. James the 16th September, 1791, of which I shall read the following extract:—

EXTRACT from *His Majesty's instructions to His Excellency Lord Dorchester, dated at St. James the 16th September, 1791, viz.:*—

"1st. With these our instructions you will receive our commission under our Great Seal of Great Britain constituting you our Captain-General and Governor-in-Chief in and over our Provinces of Upper Canada and Lower Canada, *bounded as in our said commission is particularly expressed.* In the execution therefore of so much of the office and trust we have reposed in you, as relates to our Province of Lower Canada, you are to take upon you the administration of the Government of the said Province, and to do and execute all things belonging to your command according to the several powers and authorities of our said commission under our Great Seal of Great Britain and of the Act passed in the present year of our reign therein recited, and of these our instructions to you, and according to such further powers and instructions as you shall at any time hereafter receive under our signet and sign manual, or by our order in our Privy Council.

2nd, *And you are, with all due solemnity, before the members of our Executive Council, to cause our said commission to be read and published, which being done, you shall then take, and also administer, to each of the members of our said Executive Council, the oaths mentioned in an Act passed in the first year of His late Majesty King George the First.*"

The Proclamation of General Alured Clarke, dated 18th November, 1791, is as follows:—

"*Alured Clarke:*

GEORGE THE THIRD, by the Grace of God, of Great Britain, France and Ireland, King Defender of the Faith, and so forth.

To all our loving subjects whom these presents may concern—Greeting:

Whereas we have thought fit, by and with the advice of our Privy Council, by our Order in Council, dated in the month of August last, to order that our Province

of Quebec should be divided into two distinct Provinces, to be called the Province of Upper Canada and the Province of Lower Canada, by separating the said two Provinces according to the following line of division, viz.:—"To commence at a stone boundary on the north bank of the Lake St. Francis, at the Cove west of Pointe au Baudet, in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of north thirty-four degrees west to the westernmost angle of the said Seigneurie of New Longueuil; thence along the north-western boundary of the Seigneurie Vandreuil, running north twenty-five degrees east until it strikes the Ottawas River, to ascend the said river into the Lake Temiscaming, and from the head of the said lake by a line drawn due north until it strikes the boundary line of the Hudson's Bay, including all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada."

It will be observed that there is an inconsistency in this proclamation. It does not conform to the Order in Council, nor to the instructions of the King to Lord Dorchester, and it is contradictory in itself. It sets out by quoting the Order in Council of August previous, which ordered that "our Province of Quebec should be divided into two distinct Provinces, to be called the Province of Upper Canada and the Province of Lower Canada, by separating the said two Provinces according to the following line of division, viz.: To commence, &c., and after describing the line of division accurately, it concludes as follows, "including all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada." According to this wording it would be difficult to say precisely which Province the westward and southward territory was to belong to. The intention, however, is plain enough, but the wonder remains, how a Province could be divided into two distinct Provinces by adding to it, or rather one side of it, an indefinite extent of territory which formed no part of it.

From the time at which this proclamation of General Alured Clarke's was issued (18th November, 1791), up to 1835, the commissions as to boundaries were all similar to that of the 12th September, 1791.

*By Mr. DeCosmos:—*

64. What meaning would you attach to the boundary line of Hudson's Bay?—In my report I have taken it to mean the shore of the bay.

*By the Chairman:—*

65. On the maps of the time there is a boundary line drawn inland, called the boundary line of Hudson's Bay, and the commissions issued said north to the boundary line of Hudson's Bay, evidently referring to some such inland line. In 1838 the word *shore* was first used. Do you conceive *shore* and *boundary line* to be identical?—That is the view expressed in my report. I will say again to the Committee, I have nothing to communicate to them beyond what is in my report, and what I have stated is simply the considerations which, I think, throw light on the design of the Government, in dealing with this question, and to enable the Committee to see clearly what was intended to be accomplished by the various steps taken. I think there is only one fact which I have omitted to state in my report. The first session of the Upper Canada Parliament, under that constitution, was held on the American side of the River Niagara; that the western part of the State of New York was represented in it; that the City of Detroit, and what is now the State of Michigan, was also represented in that Assembly; that the whole country to the Mississippi was legislated for, and that stipendiary magistrates were appointed in various parts of that country, which, by the Treaty of 1783, nine years before, was to have been surrendered to the United States, showing very clearly the intention to reclaim the territory under that proclamation.

*By Mr. DeCosmos:—*

66. Would not that proclamation be an assumption?—If the Crown chose to abrogate the treaty, it had the power to do so. What Lord Dorchester told the Indians was that the treaty was disregarded by the English because it had been disregarded by the Americans, and the boundary had been so far repudiated that it



was thought necessary to re-establish it by the Treaty of 1794. The King could make the boundary where he pleased. No British court of law would question the propriety of his act.

67. But it does not seem clear that any action of the English Government could over-ride the treaty?—Certainly. There is no domestic tribunal to question their act. Any Government may repudiate a treaty. The fact is, that the English Government, although the treaty had provided for making that the boundary, the Act was not consummated, they had never surrendered the country. They held the military posts, and did not surrender them until 1796, 13 years after the Treaty of Versailles was concluded. They held them as a pledge that the obligations entered into by the United States would be fulfilled. The whole correspondence between the Government and their confidential officers shows what the policy was. Governor Simcoe's first Parliament sat on the American side of the boundary, and representatives from sections of the surrendered country were permitted to sit in it. That would hardly have been the case, and the Governor would not have appointed magistrates on the American side, as he did at Mackinaw, except with the sanction of the Home Government.

68. The point is to determine what bearing that has on the western boundary?—It shows clearly the pleasure of the Crown in the matter. It shows what the policy of the Government, in setting apart the western province, and what they meant by extending it southward and westward to the utmost limits of what was known as Canada. It shows, too, how an Act of State relating to a political department of Government is interpreted.

*By the Chairman :—*

69. Mr. Blake said, the other day, and the remark struck me as a very sensible one, that the true way to find the meaning of an Act of Parliament is to look within the four corners of the Act itself?—That rule applies to Acts regulating the conduct of citizens and subjects; it does not apply to Acts of State. All these Acts and Proclamations are Acts of State, and must be dealt with according to the rules which govern in such cases; and no one of them is more clearly established than this—that the intention disclosed by Ministers in proposing the law for administering a Government is the best interpreter of the law, as in the case given at page 83 of my second report.

Committee then adjourned.

WEDNESDAY, 10th March, 1880.

The Committee met at 11 o'clock. Mr. Dawson in the chair.

Professor ROBERT BELL, M.D., of the Geological Survey, was called and examined.

*By the Chairman :*

70. Your explorations have extended from the height of land down to James' Bay, I believe?—During the last eleven years I have explored throughout the whole of the territory in dispute down to Hudson's Bay and James' Bay. I commenced in 1869 with a survey of Lake Nipigon, Black Sturgeon River, and some of the waters in that neighborhood and around Thunder Bay. Ever since that year, until last summer, I have continued making explorations, in that direction and have surveyed nearly all the principal rivers and lakes in the disputed region. I have also gone beyond the limits of the country in question.

71. This is the territory we are anxious to get information about. It would be of very great interest to the Committee to know where the habitable part of that territory is. Is the climate on the borders of the James' Bay such that crops could be raised there for the sustenance of human life?—I think so. At present there are many other tracts open for settlement, which are more accessible than this region, but there can be no doubt, that people can live here entirely by farming once it is settled.



*By Mr. Robinson :*

72. You are connected with the Geological Survey ?—Yes. Since Confederation our operations have been extended to the more distant parts of the Dominion, the exploration of the populated portion of Ontario being almost suspended.

*By the Chairman :*

73. You have been at the mouth of the Albany River ?—Not quite. I have surveyed the Albany from a point lying to the north of Thunder Bay, to the junction of the Kinogami River, which runs from Long Lake. It is sometimes called "English River."

74. Is the Albany River navigable from the last-named point to its mouth ?—It is for river steamers, I understand ; and both streams are navigable for such craft for some distance above their junction.

75. To what extent do you consider the Albany River navigable altogether from James' Bay ?—Roughly, I would say, about 250 miles, following the river, or up to Martin's Falls.

76. How far are those Falls from Lake St. Joseph ?—I can scarcely say the correct distance, but I suppose they are a little more than a hundred and fifty miles below Lake St. Joseph. As to the Kinogami River, which we have been speaking about, I may say there are so many English Rivers in the Hudson's Bay Territory that we prefer to retain the Indian name for this one. It means the Long Lake River.

77. A certain distance from the shore of the Hudson's Bay the climate becomes milder, I suppose ?—I do not think there is much difference, because as you go south the elevation becomes greater, and that compensates for any improvement you would otherwise gain from going south as far as the height of land.

78. Upon the whole the district is habitable, I suppose ; and there is a good deal of good land there ?—Yes ; but I should say the best part of the district is that drained by the various branches of the Moose River. It is more rocky to the west and more swampy towards the north in this region.

79. Proceeding westward from the region of Lake Nipigon, the climate must be pretty good ?—The trees indicate that it improves in that direction. Of course, any observation we might take of temperature would be of very little use, because we were under different circumstances every day. The only way we could judge of the climate was by the flora, and that improved as we went west.

*By Mr. Trow :*

80. Does the snow fall heavier or lighter there than south of the height of land ?—I have never been there in the winter, but from the accounts I have heard, the snow-fall does not appear to be great.

81. Is there much land fit for colonization ?—In the Moose River country, supposing the climate to be suitable, there would be a field for colonization, but westward of that tract much of the country is very rocky.

*By the Chairman :*

82. Are there indications of valuable minerals in that territory ?—Yes ; in the western part more particularly.

*By Mr. Trow :*

83. Have you been in the Rainy River District ?—Yes.

84. Is there much territory there valuable for settlement ?—I think not ; there is a strip on the banks of the Rainy River, but north of that it is swampy, and still further north, rocky.

*By the Chairman :*

85. What do you call a narrow strip ?—It is a small strip of a few miles ; as far as I can learn it is not very extensive.

*By Mr. Trow :*

86. What is the general appearance of the country between Rainy River and the line of the Canadian Pacific Railway ?—I only know that particular section as far as can be judged from the shores of the Lake of the Woods, but eastward of this lake,

I once made a trip from Lac des Mille Lacs to the Lake of the Woods, that would cross and recross the Pacific Railway line.

87. Is there much valuable pine there?—Yes, there is a good deal of pine in that country.

88. That would be beyond the Lake of the Woods?—Yes, there is a good deal of pine in the region around Lonely Lake; and here and there on English River, that flows out of Lonely Lake, there are to be found, in addition to the white pine, clumps of red pine.

89. Would the season not be too short for agricultural purposes, even if the land is good?—I do not think there can be much difference between that region and Manitoba; they are in the same latitude, and are situated close to one another.

90. But is not this district much higher than Manitoba?—It is somewhat more elevated.

91. And would not the lower level of Manitoba moderate the climate materially?—It would, to some extent, but the slight difference in level could not affect it much.

*By the Chairman:*

92. Are you aware what crops they grow there? Do they not grow Indian corn at the Lake of the Woods, and Fort Francis?—Yes, I have seen Indian corn grown at Lake of the Woods, and along the Winnipeg River near that lake.

*By Mr. Trow:*

93. It is grown in very limited quantities, I suppose?—Yes, by the Indians, even under the best circumstances they would not cultivate much of it.

94. Do you think it could be produced under any circumstances?—Yes, but I do not think it would be a paying crop. It is rather beyond the ordinary limits where Indian corn is grown in large quantities. It seems to be an early variety which they grow.

*By the Chairman:*

95. The old maize of the Indians, I suppose—grown by them from time immemorial?—Yes.

*By Mr. Trow:*

96. You have explored the Nelson River, I understand?—Yes, I have surveyed it throughout its entire length, and all its channels.

97. To its mouth?—Yes.

98. Has it much obstruction to navigation?—Yes, taking the river as a whole.

99. Are the difficulties insurmountable?—Yes, practically, I should think so—that is, to make it navigable from one end to the other. There are navigable stretches in the centre and at the upper and lower parts, but between these it is very much obstructed.

100. What is the probable distance from the efflux of Lake Winnipeg to its mouth?—Nearly 400 miles, following the river itself.

*By the Chairman:*

101. Referring again to the Albany River, what is the character of the land along the navigable stretch from the sea to Martin's Falls?—The banks consist of drift clay, underlaid by the more ancient formations. Inland from the banks the country is level for a long distance on either side.

102. With regard to the geological formation, is it limestone in this section of the river?—Mostly limestone. Towards the forks of the river there is a good deal of reddish shale or marl. The geological formations are Silurian and Devonian, or much the same as those of the western peninsula of Upper Canada.

103. Is there not some prospect of finding coal there? Does not the Devonian formation underlie the coal?—Very little coal is found in the Devonian formation in any country, as it is too low in the geological series. The so-called coal of the Moose River is lignite belonging to the drift period. The lignite of the prairies is mostly cretaceous and tertiary. This is of rather newer age, but much the same in quality.

104. Is it found in sufficient quantities to be of economic value?—Some of the seams are perhaps six feet or rather more in thickness, but most of them are less.

*By Mr. Trow :*

105. Where is that found?—On the Missinaibi, or western branch of Moose River. I found loose pieces of similar lignite on the Albany. I have no doubt it also occurs there *in situ*.

*By Mr. DeCosmos :*

106. How far are the lignite beds from the mouth of the Moose River?—They begin at less than 100 miles, and extend for nearly 30 miles up stream.

*By Mr. Robinson :*

107. Is that lignite of a pretty fair character?—Yes ; but it requires to be dried ; it is like the lignite of the plains, and will not burn well when first mined. The difference between bituminous coal and lignite is that lignite contains a very much larger proportion of water, and requires to be dried.

108. What proportion of carbon is in it?—Very much the same as in bituminous coal—less the water.

109. About 40 per cent., perhaps?—It is somewhere about 45 per cent. of fixed carbon, I think ; but you can find that in the geological report for 1875. There is abundance of wood throughout that country, therefore I do not suppose lignite will be of much consequence for many years to come.

110. What kind of wood—deciduous trees?—Originally, it was principally coniferous trees, but they have been burnt, over large tracts, and now poplar and white birch are growing up in their place. I found the Indians were quite willing to give up burning the forests in that region, whenever they were told the timber was of any value. I have always taken pains to ask the Indian chiefs to stop the forest fires by taking the precaution of building their fires on the rocks and extinguishing them when not needed. Each year that I have gone back, I have seen fewer forest fires, as the result of this advice.

111. The country is not so humid that forest fires are prevented?—In the latter part of the summer, the forest fires used to run over immense areas. There is more of that country which has been burnt at different times, than remains green.

*By the Chairman :—*

112. Have you ever given any attention to the subject of the boundary question?—I have read a good deal of what is contained in the books on the table, but I have not made the subject a special study. It has occurred to me, however, that if the height of land were to be defined as a boundary, it would be exceedingly difficult to find it. The country in its vicinity is almost always level, and the heads of the streams interlock so much that you cannot easily tell which way the water may tend to run.

*By Mr. Robinson :—*

113. Is it so between the Michipicoten and Moose Rivers?—One of the principal depressions of the country occurs just on that line. It is one of the easiest and lowest places for crossing the divide. The elevation is not more than some 1,100 or 1,200 feet above the sea, and the portage is so short you could almost throw a stone from the water on one side to that on the other.

114. The streams interlock?—Yes. If the country were rugged you could find a line dividing them even if they did interlock, but along this line it is so level it would be difficult to do so. The water soaks through the moss and swamps and one cannot always tell on which side of the water-shed he may be.

*By Mr. DeCosmos :—*

115. Then there is a kind of mossy soil?—Yes, a good deal.

116. Fit for making peat?—It is not thick enough for that. It is just the green moss of recent years.

117. Is there any country either in Eastern Canada, or the Eastern States, that may be compared to this disputed territory?—Not exactly. In the Gaspé country, we have a somewhat similar forest, but there, very little bare rock is exposed ; the hills are mostly earth but the forest is similar, and the ground is also covered with moss. The climate of Gaspé is more moist than that of the region we are speaking of.



118. And as to the soil?—I do not know any region like it as to the soil, and no single description will apply to the whole of the region. If the eastern part of it were in the same latitude as the peninsula of Ontario, north of Lake Erie, it would be almost the same in other respects, but westward, it is like the country north of the Ottawa. The geological formation is the same. It is more rugged towards Lake Superior than it is to the northward, especially beyond the height of land.

*By Mr. Trow :*

119. What is the principal species of timber?—Spruce, I should say, is the commonest of all speaking generally of the whole country.

120. Are the trees of good size?—Yes; often a very fair size in some regions, there is a great deal of Banksian or "pitch" pine, much of which is of a size suitable for making timber, an unusual circumstance with this species.

*By the Chairman :*

121. Has not gold been discovered in some parts of this territory—about Rat Portage and on Lake of the Woods?—Yes, I have seen specimens of gold from these localities.

122. Do you think that this section is likely to turn out a good mineral region?—I think the prospect is very good for some of the metals; for gold, silver, lead, copper and iron, the geological formation is favorable.

123. In what form is the gold found?—So far, it has been found in veins entirely.

*By Mr. Trow :*

124. Have not good specimens of gold been discovered east of that; some 100 miles west of Thunder Bay, and near the height of land in that quarter?—Yes, I have also seen very fine specimens of gold from that region. The more favorable rocks occur in belts all through the country from Thunder Bay to the Lake of the Woods, occupying about one-third of the whole area.

*By the Chairman :*

125. What is the geological age of the rocks in which the gold is found in that section?—We call them, for the present Huronian. They are similar to the rocks north of Lake Huron. They may be subdivided hereafter, but for the present we call them all Huronian. They are not far from the same geological age as the gold-bearing rocks of Nova Scotia.

*By Mr. Trow :*

126. What proportion of the country should you judge to be fit for cultivation?—I have never made any calculation for the whole region. The country I have explored in that direction covers at least 200,000 square miles. It would be possible, however, to tell approximately by putting my notes together expressly for that purpose.

127. Are there not numerous lakes so situated that you cannot get any continuous settlement?—I do not think the lakes would interfere with continuous settlement, if the country were otherwise suitable. They could be easily crossed or got round, and the land between them is sufficiently extensive for colonization.

*By Mr. Robinson :*

128. Are there any valleys of considerable extent?—Immediately north of Lake Superior there is a little good land in the form of valleys; perhaps the principal area of good land lies to the south-west of Lake Nipigon. There is a large extent of fair land immediately around Thunder Bay. And some cultivable land east of Shebandowan Lake; beyond this there is but little in that section.

*By Mr. Trow :*

129. Is there much good land on the Mattawan?—Yes, that is in the region I speak of east of Shebandowan Lake.

130. What amount of land?—It is wider as you go down the Mattawan River towards the Kaministiquia, and it narrows towards Shebandowan Lake. There is a good stretch of red clay land in the valley of the Kaministiquia. It extends westward until you reach Shebandowan Lake.

*By the Chairman :*

131. All through the territory there are detached areas of good land, are there not?—Yes, along the Albany a great deal of the soil would be good if the climate was favorable; but it is not so good as in the Moose River region.

*By Mr. Trow :*

132. Your attention has not been called much to this disputed boundary?—Not very much.

133. It is not in your line of business?—No. It has occurred to me, however, that some natural boundary, formed by a geographical feature, would be the best. If such a boundary were adopted, no expense would be incurred in laying it out.

134. Would not the Albany River be a good boundary?—The Albany River would make a very good boundary, if you define what part to follow; but the award does not state anything in detail on this matter, but merely says that the Albany River shall be followed. That river frequently splits up and flows in different channels. At one place it follows two widely separated channels for about twenty miles. So that if you made the boundary line on the south side, you would throw out a large tract which would be included if the line went on the north side. Large islands frequently occur, dividing the river into two almost equal parts, and it is difficult to say on which side of these islands the boundary should be. In some cases one channel is either much wider or deeper than the other.

*By Mr. Weldon :*

135. Would not one channel, which is larger than the other, be the main channel?—Yes; but it is not always easy to say which is the largest channel. The boundary might be defined to follow the deepest or widest, or the North or South channel, past islands.

136. Are both channels generally navigable?—The river is not navigable at all for large craft, until you get down to Martin's Falls.

137. The channels are, then, above Martin's Falls?—Yes; the river is more divided above these "falls" than below.

*By the Chairman :*

138. It is quite a large river?—About the size of the Ottawa here; perhaps not quite so large as the latter below the Gatineau; it is more uniform in volume at different seasons, and contains more water than the Ottawa when both are low, and not so much when both are high.

139. It is more uniform?—Yes; and on an average I should say it is as large as the Ottawa at this city.

*By Mr. Trow :*

140. Would it be much larger than Rainy River?—Yes; much larger.

*By Mr. Royal :*

141. You have reached the shores of James' Bay?—Frequently; and I have explored the east and west coasts of Hudson's Bay.

142. What is the character of James' Bay; is the water shallow?—Yes; towards the head of the bay, for long distances from the shore, it is very shallow and muddy.

143. Have you any knowledge of the navigation of it?—I have sailed my own boat over the bay.

144. At what time of the year?—Both in the autumn and in the spring. I made two voyages in autumn in an open boat, and one in the spring.

145. What time in the spring?—Late in that season.

*By Mr. Trow :*

146. What time does the ice break up in James' Bay?—It had always broken up long before I reached the Bay. I could not say the exact time when it does break up.

*By Mr. Robinson :*

147. You never wintered there?—No.

*By Mr. DeCosmos :—*

148. Do the Hudson's Bay Company's people keep a meteorological register?—They have commenced to keep one now at Moose Factory in connection with the Toronto Observatory.

149. But, independent of that, in their journals?—Some do, others do not. They all keep journals of occurrences, but do not note the actual temperature. They note what they consider to be of most interest in connection with their own business.

*By Mr. Royal :—*

150. Have you ever taken soundings to ascertain the depth of the water in James' Bay?—Only where it is very shallow.

151. At a distance from shore?—Yes; in James' Bay, even when you are almost out of sight of the land, you can sometimes still touch the bottom with an oar. In other places there are deep channels.

*By Mr. DeCosmos :—*

152. Is there much difference between high and low water?—I should think about nine or ten feet at spring tide, and five or six feet at neap tide, as far as I could observe.

*By the Chairman :—*

153. The Bay must be subject to great storms with such a shallow sea?—No; it did not strike me as being dangerous in that respect.

*By Mr. DeCosmos :—*

154. Are the Moose River and other streams that fall into the bay navigable for steamers?—At high water you might go up the Moose River in a steamer a certain distance, but it is very wide and shallow; at low water it is occasionally hard to pass in a canoe, even where the river-bed is a mile wide.

155. What kind of bed has it?—Flat limestone rock, often covered with gravel and shingle.

*By Mr. Royal :—*

156. Has James' Bay the same bottom?—No; it is muddy, with boulders in some places.

157. What is the name of the Hudson's Bay Company's post at the mouth of the Albany?—Fort Albany.

158. Do they communicate with York Factory?—Their communications are principally with Moose Factory. It is only about one hundred miles from Moose Factory to Fort Albany. Moose is at the south end of James' Bay, and Fort Albany is 100 miles northward on the western side.

159. Do these forts communicate with York Factory?—Very seldom; York and Moose communicate directly with England; each has its own ship.

160. Then ships go to Moose Factory?—Yes; to the anchorage outside, from five to seven miles from the factory.

161. The shores of Hudson's Bay, I suppose, are pretty much like the shores of James' Bay—very shallow for a certain distance?—On the west side the shores are generally shallow, except far north; but the east side is deep and bold after you pass Cape Jones going north.

*By Mr. DeCosmos :—*

162. Is the land fit for agriculture along the branches of the Moose River, called the Missinaibi, Mattagami and Abbitibi?—A good deal of it is.

163. Towards the sources or towards the mouth?—Not quite to the mouth; it gets rocky about the sources; but in the intermediate country a great deal of the land is good.

164. Do they grow wheat there?—Wheat is said to have been grown in some parts.

165. Barley and oats?—Barley and oats grow well.

166. Potatoes?—Yes, potatoes grow very well; they will grow anywhere in that region.

167. Down to the bay?—Yes, and further north; wherever they have been tried.

168. Are the trees coniferous towards the north?—Partly so; as you go north the trees get smaller.



169. What is the character of the timber along Moose River?—The most common of all is the spruce; then there are tamarac, balsam fir, pine, cedar, balsam, poplar, aspen, white birch, ash and elm; the white cedar just reaches James' Bay and goes no further.

170. Any maple or beech?—There is a small species of maple called the ground maple, but not the sugar maple.

171. No beech?—No; there is the trembling-leaved poplar; next to that, the white birch is the most common deciduous tree.

*By Mr. Royal:—*

172. Did you meet any large bodies of Indians in that territory?—I have seen them at the Hudson's Bay posts in considerable numbers; they come long distances to trade in the spring and early summer, but in the interior, you do not see many in summer.

*By the Chairman:—*

173. What population of Indians, do you suppose, inhabit the whole territory from Nipigon to Lake St. Joseph, thence down to the mouth of the Albany?—I could scarcely say; that might be ascertained though, easily enough.

*By Mr. Royal:—*

174. Do they all belong to the same tribe?—Yes; to the Saulteux.

175. Do they all speak the same language?—Yes.

176. The Swampy?—No; that is scarcely understood by them; when written it is nearly the same as the Saulteux, but the pronunciation is different. I have met with Swampy Indians whom my Saulteux Indians could scarcely understand.

*By Mr. Trow:—*

177. Is there not a band of the Sioux there, in the southern portion?—No; there are no Sioux at all; the whole of the Indians of that region belong to one tribe, and all speak the same language.

178. I have reference to the southern portion of the territory, near the height of land; there must be Sioux in that direction—the band of Sioux that left Minnesota after the massacre?—We have never seen them. There are Saulteux Indians in Minnesota; but I do not think the Sioux ever go into the eastern wooded region at all.

FRIDAY, 12th March, 1880.

Committee met at 11 o'clock; Mr. DAWSON in the Chair.

Hon. DONALD A. SMITH, M.P., called and examined.

*By the Chairman:—*

179. I suppose that previous to the time of the Treaty of Utrecht, the Hudson's Bay Company's possession was rather uncertain?—It had been disputed.

180. But subsequent to that Treaty, in the neighborhood of Hudson's Bay it was undisputed?—The Hudson's Bay Company always held it to be so.

181. Since the Treaty of Utrecht there has been no dispute as to the possession on the confines of the Bay?—Not that I am aware of; never.

182. The possession of the Hudson's Bay Company originated under a charter?—This is the charter of the Company granted by King Charles II.

183. In 1670?—Yes.

*By Mr. Robinson:—*

184. In what year was the Treaty of Utrecht?—In 1714.

*By the Chairman:—*

185. What territory do you consider the charter held by the Company extended over and embraced?—All the lands of North America, the waters of which empty themselves into Hudson's Bay and Hudson's Straits, bounded by what is usually known as the height of land.

186. Then, you consider the height of land or St. Lawrence watershed to be the southern boundary of the territory of the Hudson's Bay Company?—The Hudson's Bay Company have always held it to be so. I might say that the opinions they have had from learned counsel confirm them in that view.

*By Mr. Trow :*

187. The Hudson's Bay Company did not confine themselves to these particular limits which you now describe?—They did not because they held a license to trade in the Territory beyond that as well, in what is known as the Indian country, outside of Rupert's Land, as well as in their Territory proper, which is all that country, the waters of which empty themselves into Hudson Bay and Hudson Straits. They had a special license from the Imperial Government.

*By the Chairman :*

188. Might it not be well to submit that Special License; I think it is dated 1821; it was granted when the Hudsons Bay and North West Companies coalesced.

189. You spoke about the opinions of Counsel; I presume they were English Counsel learned in the law. You have, I suppose, some of those opinions?—Yes, Lord Mansfield, Mr. Scarlett, Lord Abinger, Lord Romilly, and other most eminent counsel were consulted by the Hudson's Bay Company. I think the names of some of them are given here (page 327, House of Commons Report, 1857.) Lord Mansfield, Lord Romilly, Erskine, Scarlett, Holroyd, and several others. (Opinions produced.)

*By Mr. Weldon :*

190. Where are those opinions to be found?—Some of them are here.

191. Does the case submitted by the Hudson's Bay Company accompany the opinion?—Yes; the case of the Company is given.

*By Mr. De Cosmos :*

192. Were there not legal opinions given in England against the Hudson's Bay Company?—There were opinions given at the instance of the North West Company, those of Lord Brougham, and one or two others, which were not so favorable.

193. Could you state the names of the others?

*The Chairman.*—They are in the Ontario documents here.

*By Mr. Robinson :*

194. As to the boundary?—In some cases—as to the boundary. The boundary was held to be by those who were consulted to be the height of land.

*By Mr. Trow :*

195. Does Lord Brougham's opinion take in the boundary?—I am not very sure; I think it does.

196. What were those opinions which were given adversely to those previous decisions in favor of the company?—They are to the effect that, with regard to trade, the company could not claim an exclusive right to trade in the country, as being the Government of the country, but that as to their territorial rights there could be no question.

*By the Chairman :*

197. They all agreed that the charter was valid as to territorial rights?—Yes; and that their right to exclude other traders from the country would be merely as the proprietors, in a matter of trespass.

198. With regard to the charter of the Hudson's Bay Company, I believe that part of the condition on which it was granted was that the company should establish colonies within the territory which it covered. I believe that in carrying out this condition the company established a colony called the colony of Assiniboia. Is not that the case?—It is.

199. As to whether that colony was recognized by the Imperial Government or not, that is an important question?—I believe that on two occasions the Imperial troops were sent out to maintain order in the Territory; is that so?—Yes; that colony was recognized by the Imperial Government, and Her Majesty's troops were sent out there. The 6th Regiment and the Canadian Rifles were there at different times.

*By Mr. Weldon :*

200. At what time was the 6th<sup>th</sup> Regiment there ?—I think in 1846, under Colonel Crofton.

201. And the Canadian Rifles, when ?—In 1857 the Canadian Rifles were sent there under Major Seaton, and afterwards under Captain Hibbert. The Home Government also assisted in forming a body of pensioners for service in Red River after that time. Those pensioners were sent out there, and I believe some of them are, at this moment, in the Red River country, although not employed as a force.

*By Mr. De Cosmos :*

202. Who paid the force ?—The Imperial Government paid the troops and the company contributed to their sustenance.

203. Did the Imperial Government also contribute to the expenses of the pensioners ?—Not further than their pensions.

*By the Chairman :*

204. The Imperial Government corresponded with the Governors and the Government of the new colony of Assiniboia, I presume ?—With the Governors of the Hudson's Bay Company.

205. Had the Government of that colony Courts established and power to administer the law ; had it, for instance, the power of life and death ?—It had the power of life and death. There was a Council of Assiniboia, and a Recorder who was Judge—Judge Thom.

*By Mr. Royal :*

206. He was the first Recorder ?—Yes ; as I have said, the Government had power of life and death, and one person was executed.

*By Mr. De Cosmos :*

207. What was the date of these appointments ?—The appointment of the first Recorder must have been in 1838 or 1839.

*By the Chairman :*

208. The colony, I believe, had clearly defined boundaries ?—It had

209. And these boundaries are given in Mr. Mills' report ?—Yes.

*By Mr. Trow :*

210. I suppose the old boundaries cover the whole of Dakotah ?—A portion of Dakotah.

211. And also Minnesota ?—Some part of Minnesota.

*By Mr DeCosmos :*

212. What was the ascertained boundary of the Colony of Assiniboia ?—I don't recollect exactly. I should state that I have given no particular attention to this subject for many years past.

*The Chairman* read from the proclamation of Governor McDonell, as follows :—

"Whereas the Governor and Company of Hudson's Bay have ceded to the Right Honorable Thomas, Earl of Selkirk, his heirs and successors, for ever, all that tract of land or territory, bounded by a line running: as follows, viz.: Beginning on the western shore of Lake Winnipic, at a point in fifty-two degrees and thirty minutes north latitude; and thence running due west to Lake Winipigashish, otherwise called Little Winnipic; then in a southerly direction through the said lake, so as to strike its western shore in latitude fifty-two degrees; then due west to the place where the parallel of fifty-two degrees north latitude intersects the western branch of Red River, otherwise called Assiniboine; then due south from that point of intersection to the height of land which separates the waters running into Hudson's Bay from those of the Missouri and Mississippi Rivers; then in an easterly direction along the height of land to the source of the River Winnipic (meaning by such last-named river the principal branch of the waters which unite in the Lake Saginagas); thence along the main stream of those waters and the middle of the several lakes through which they pass, to the mouth of the Winnipic River; and thence in a northerly direction through the middle of the Lake Winnipic, to the place of beginning; which territory is called Assiniboia, and of which I, the undersigned, have been duly appointed Governor."



213. *Mr. Weldon*.—What date was that given?

*The Chairman*.—It says, "given under my hand at Fort Daer (Pembina), the 8th day of January, 1814.

*By the Chairman, to witness:*

214. So that the colony existed for a long time, and was recognised by the Imperial Government as a Crown colony, in fact? It was. The Hudson's Bay Company had a council called the Northern Council. Their factors or officers were the Council of Rupert's Land for all the purposes of Government. Besides having their officers and government at Red River, the company had Sheriffs for Rupert's Land.

215. Outside of the colony?—Yes.

216. So they had all the powers of Government?—Yes.

*By Mr. Ross:*

217. Did the southern boundary of the so-called colony of Assiniboia correspond with what was supposed to be the southern boundary of the Hudson's Bay Company's territory?—Yes; the height of land.

218. But the eastern boundary did not in any way correspond with what was supposed to be the eastern boundary of the Hudson's Bay Company?—It did not.

219. Then it was only the boundary of the colony on the south side that corresponded with the boundary of the Hudson's Bay Company?—Yes; the boundaries of the colony were made simply for its convenience.

*By the Chairman:*

220. Another important point is this, was the height of land recognized as a boundary by Upper Canada. Have you any documents showing that it was so recognized?—Yes, there was the Robinson treaty.

221. I believe that the Imperial Government, in proclamations and otherwise, recognized the validity of the Company's charter and the existence of their claims up to the time the country passed to Canada?—Yes; on many occasions, up to the last moment before the transfer. At the latter time I was acting, not as Governor of the Hudson's Bay Company, for the Governor is the Chairman of the Company in England, but as territorial Governor, and the then commander of the forces insisted that I, acting as Governor of Hudson's Bay, should administer the Government when the forces went in in 1870. I did, in fact, administer the Government until Lieutenant Governor Archibald arrived.

*The Chairman*.—The treaty referred to by Mr. Smith is that made by Upper Canada with the Lake Superior Indians. It provides: "that for and in consideration of the sum of £2,000 of good and lawful money of Upper Canada, to them in hand paid, and for the further perpetual annuity of £500, the same to be paid and delivered to the said Chiefs and their tribes at a convenient season of each summer, not later than the first day of August, at the Honorable the Hudson's Bay Company's posts of Michipicoten and Fort William, they, the said Chiefs and principal men, do freely, fully and voluntarily surrender, cede, grant and convey unto Her Majesty, her heirs and successors, for ever, all their right, title and interest in the whole of the territory above described, save and except the reservations set forth in the schedule hereunto annexed, which reservation shall be held and occupied by the said Chiefs and their tribes in common for the purposes of residence and cultivation. And should the said Chiefs and their respective tribes at any time desire to dispose of any mineral or other valuable productions upon the said reservations, the same will be, at their request, sold by order of the Superintendent-General of the Indian Department for the time being, for their sole use and benefit and to the best advantage."

Here is the description of the territory: "from Batchewanaung Bay to Figeon River, at the western extremity of said lake, and inland throughout that extent to the height of land which separates the territory covered by the Charter of the Honorable the Hudson's Bay Company from the said tract and also, the islands in the said lake within the boundaries of the British possessions therein, of the other part."

*The Chairman, to Witness:*

222. In the old descriptions which are here and in the commissions to Governors, there is a boundary line of Hudson's Bay referred to. In the descriptions of the

boundary between Upper and Lower Canada the line is always referred to as running due north from the head of Lake Temiscaming, until it strikes the boundary of Hudson's Bay. That continued for a very long period, up to 1838, to be the description contained in the commissions to Governors. Subsequent to 1838 the description given is from the head of Lake Temiscaming due north, until it strikes the shore of Hudson's Bay. The question I wish to ask is: was the boundary line of Hudson's Bay identical with the shore of Hudson's Bay, or was it not?—Not with the shore. It was understood that the height of land was the boundary line of Hudson's Bay, or the Hudson's Bay Company's territory. I have noticed what the Chairman has mentioned, with respect to the change which, I think, was made when Lord Durham was appointed Governor and Commissioner. I can only account for it as being a mistake on the part of some one in one of the offices of the English Government, who took this to be the shore of Hudson's Bay.

*By Mr. Robinson :*

223. But if it was a mistake it was repeated in the commissions of half a dozen Governors?—In those of four.

224. In the commission of Lord Gosford in 1836 or 1837, of Lord Elgin as late as 1846, and in that of Lord Durham, also, the expression "shore" was used?—I do not think there ever was any correspondence with the Hudson's Bay Company at home on the subject, nor that they were aware of any cause for the change. And from that I suppose that it occurred accidentally, the official not having any knowledge whereby to distinguish between the boundary and the shore.

*By Mr. Ross :*

225. Did any dispute ever arise on account of that supposed clerical error?—Not that I am aware of.

*By Mr. Ouimet :*

226. The Hudson's Bay Company always had possession of the territory to the height of land?—Yes.

227. Suppose the southern boundary of the Hudson's Bay Company's territory should be the shore of Hudson's Bay, where would be the territory; would it consist of any land of importance?—There really would be no territory; there really would be nothing worth having. The Charter says most explicitly they shall have all lands the waters of which empty into Hudson's Bay and Hudson's Straits.

*By Mr. Weldon :*

228. Are those exactly the words?—It is more general afterwards. It says all such lands not possessed by any other Christian power which they can have access to from those.

229. Then the question arises whether France or England was in possession of the land at Albany River?—That question was supposed to have been decided by the Treaty of Utrecht. The Hudson's Bay Company put forward their claim and it was not questioned.

230. At the time of the Treaty of Utrecht it was surrendered to Great Britain?—Certain portions.

231. But previous to the Treaty of Ryswick those portions of the country were given up to France?—They were.

*By Mr. Royal :*

232. I suppose, under the interpretation given by the Hudson's Bay Company to that part of their Constitution, they never considered they were limited for trading purposes to the shores of Hudson's Bay?—Never.

233. And particularly, they had the right to build forts and fur trading establishments within the watershed of Hudson's Bay?—Yes.

234. That was never questioned?—It was not questioned except by rival companies at the time, nothing more; and the Hudson's Bay Company resisted what they believed to be the encroachments of the North-West Company. On one occasion they took prisoner the principal officer of the North-West Company, J. C. McTavish.



*By Mr. DeCosmos :*

235. Where was that?—Near Hudson's Bay, on one of the islands.

236. What part of Hudson's Bay?—St. James' Bay.

*By Mr. DeCosmos :*

237. Who appointed the magistrates around the shores of James' Bay?—The Hudson's Bay Company. The chief factors of the company were already magistrates, *ex-officio*, under the charter, and they exercised all the powers of magistrates under the charter, in conformity, as near as the circumstances would permit, with the laws of England.

238. Did the Canadian Government, so far as you are aware, ever appoint any magistrates or other officers of Canada to perform magisterial duties within the territory, commencing at the northern and western boundaries of Quebec; that is within, and west of a line drawn from Temiscaming to James' Bay.—My own impression was that the magistrates they appointed were for that district lying outside of Rupert's Land for all the district of Athabaska and Mackenzie River, including what is now called British Columbia. The Hudson's Bay Company's officers of a certain position were appointed magistrates, for that district of country; principally those who were magistrates under the charter for Rupert's Land.

*By Mr. Ouimet :*

239. By what Government?—By the British Government in one instance, and I think, then, by the Governor General.

*By Mr. Ross :*

240. I understand you to say that the claim of the Hudson's Bay Company to the trade of the territory lying south of Hudson's Bay was disputed by the North-West Company?—The North-West Company were rivals in trade of the Hudson's Bay Company, and they certainly did trespass on many occasions within that territory, that is, they committed what was considered trespass by the Hudson's Bay Company.

241. You stated they took a prisoner, Mr. McTavish?—Yes; the Hudson's Bay Company did.

242. In what way was the dispute settled?—It was settled amicably. They went on opposing each other until there was nothing left to oppose; they were completely run down, and besides there were some very influential men in England who took an interest in the Hudson's Bay Company, one of whom was the Right Honorable Mr. Ellis, who had, perhaps, more influence with the British Government than any man of that time.

243. The matter never went into Court to determine the relative jurisdiction of the two companies?—No.

244. Do you know of any papers in which the Hudson's Bay Company set forth their respective claims?—No; nothing further than the opinions of counsel in England, which they have kept. These opinions were adverse to the claims of the North-West Company, which failed on every occasion to establish their case. As Mr. Ellis afterwards stated, they had no case against the Hudson's Bay Company which could stand good in court.

*By Mr. Trow :*

245. Had the North-West Company forts erected at the west end of Lake Winnipeg prior to the surrender by the Marquis of Vaudreuil to General Amherst?—The North-West Company was only formed in 1783.

246. Have you any knowledge of what territory they occupied?—I cannot say exactly from recollection.

247. They describe certain forts on the west end of Lake Winnipeg that were then acknowledged to be within the territory occupied by the North-West Company?—I am quite aware that the North-West Company traded within that territory until 1816.

*By Mr. Royal :*

248. What was the origin of the North-West Company; was it organized under a license from the Crown in England?—No.

249. Or under an Act of the Canadian Parliament?—No; it was organized as a joint Stock Company.



250. Under what law?—Under Canadian law, and it was principally composed of Canadians.

*By Mr. Robinson :*

251. In Montreal?—Yes.

*By Mr. Royal :*

252. Their place of business was in Montreal?—Yes, but they had no territory assigned to them for the exercise of their charter.

253. None whatever?—Simply the right of trading; the privilege as a Company of carrying on business as traders, nothing more.

*By Mr. Ouimet :*

254. In what year were they incorporated?—In 1782-3.

*By Mr. Ross :*

255. You said the Hudson's Bay Company took advice of counsel as to what their claim was to the territory on which the North-West Company was encroaching. Is that in print?—It is among these papers, which are opinions of English counsel on the case. There can be no question that, as a whole, the North-West Company were much more able traders than the Hudson's Bay Company, and ultimately compelled the latter to combine with them and form one company. The North-West Company went in and availed themselves of the privileges of the Hudson's Bay Company's charter.

*By Mr. Royal :*

256. I understand that the North-West Company, when organized, was chiefly composed of French, that is, Canadian traders who had some years previously discovered that part of the country, established forts there, and carried on a very good trade with the Indians?—Yes.

257. The French or Canadian traders organized themselves into a company and transferred the ownership of these forts to the new company, as well as the different staffs of officers?—Yes; French and Scotch.

258. Do you know if there were any fur trading posts established within the limits of the territory of Rupert's Land at the time the North-West Company was formed?—I am not aware that there were any near to Hudson's Bay. There were some further inland.

259. In fact there were two companies, one known as the X. Y. Company and the other as the North-West Company?—Yes.

260. The X.Y. company was a company which had been trading in the North-West but the X.Y. company and the North-West Company were in existence at the same time and amalgamated afterwards?—I think what was known as the X. Y. Company was simply a co-partnership, not under any Act of Parliament or joint-stock arrangement.

261. After the amalgamation of the two companies, was an Imperial Act passed to regulate the fur trade?—Yes.

262. Do you know if, in that Act, the limits of the territories ceded to the Hudson's Bay Company and the new Company, are given?—They are spoken of; to the best of my recollection they are mentioned as the territories of the Hudson's Bay Company.

*By Mr. Trow :*

263. The Hudson's Bay Company, I suppose, took unlimited control of all unsettled portions, under the license they had in 1821 for the united Company from the Imperial Government?—They occupied all what was known as the Indian territory outside of Rupert's Land; it was for these territories as I mentioned before that magistrates were appointed by the Crown or by the Governor General, that is for outside territories.

*By the Chairman :*

264. For what cause was the Imperial Act of 1803 passed?—It was evidently passed to provide against certain disturbances.

265. In what part of the territory were the disturbances?—Principally in the outside territory of Athabaska and the North-West generally; also, down in the direction of Hudson's Bay, but more to the south and the west.

266. On the upper sections of the Albany River, I understand, there were disturbances?—Yes; and, I believe, the reason of the passing of the Act was that the Hudson's Bay Company being the only Governing body that had magisterial rights, their position was rather an anomalous one with regard to others going in and opposing them. Through the influence of Mr. Ellice, and others, this Act was passed, extending the jurisdiction of the Government of Canada to that country. The Company, otherwise, would not only have been the governing body, but the traders, also.

*By Mr. Weldon :*

267. That the reason for the passing of this Act were disturbances committed in the territory would appear from despatches between Canada and the Imperial Government?—It would, no doubt.

*By the Chairman :*

268. I believe some of the Hudson Bay Company's officers were killed about Brunswick House previous to 1803?—Yes, there were several.

269. One, Mr. Courtney, I think was killed?—I do not remember the name.

*By Mr. DeCosmos :*

270. Were there disturbances at the mouth of the Kaministiquia and the Eastern Boundary of Manitoba?—There were disturbances subsequently within the Red River Colony itself. There was what was known as the battle of Red River or Seven Oaks, in which the territorial Governor of the Hudson's Bay Company was killed with twenty-one others. Mr. Semple was the Governor.

271. That was within the present boundaries of Manitoba?—Yes, some three or four miles below the City of Winnipeg.

272. Could you cite documents showing that battles had occurred between parties east of Manitoba?

*By the Chairman :*

273. That is all contained in this book?—Yes, that contains the evidence taken before the House of Commons in 1857.

*By Mr. DeCosmos :*

274. Could you furnish us with a copy of that book?—Yes.

*By the Chairman :*

275. Some statements of very great importance made by Mr. Ellice are contained in this book?—Mr. Ellice had great influence at that time in England, being a successful politician as well as trader; but, although he was known as the Minister maker, he could not influence prejudicially any of the rights of the Hudson's Bay Co. against the the opinions given by counsel and those of Ministers.

*By Mr. DeCosmos :*

276. Could you inform the Committee whether there was any Act of Parliament or Order in Council of the Imperial Government fixing the boundaries of Assiniboine?—It was arranged between the Hudson's Company and the Government that these should be the boundaries, as given here; but I am not aware there was any Act to that effect.

277. I understand you to say Assiniboine was a Crown colony?—Not precisely, except as being under the authority of the Crown as delegated to the Hudson's Bay Company.

*By the Chairman :*

278. It was fully recognised as a Crown colony?—It was recognised as a colony.

*By Mr. DeCosmos :*

279. Was it created independent of the Hudson's Bay Company?—No.

*By Mr. Royal :*

280. Do you know if, from reading all the documents in which the limits of the Assiniboine Government were given, that in giving those limits attention was paid

to the limits of the Hudson's Bay Company territory itself, or whether it was a part of the territory that was erected into a separate Government?—Simply a part.

281. So that the southern or eastern limits of Assiniboia might not correspond with the southern limits of the Hudson's Bay Company's territories as ceded by the charter?—Not necessarily, as regards the eastern limits.

*By Mr. Trow :*

282. What are the circumstances that brought about the ceding of that portion of the Assiniboine colony south of 49th parallel; was it that the Hudson's Bay Company abandoned their claim to that?—It was because it became a portion of the United States under treaty.

283. Then the company had no prior claim, only an imaginary one?—It was believed, and I think we still believe, that it ought, in justice, to be a portion of English territory and now of Canadian territory.

*By Mr. DeCosmos :*

284. That is the portion south of the 49th parallel?—Yes.

285. But, at the peace after the war between Great Britain and the United States when the country south passed to the United States, did that change the right of the company to the soil under the charter of Charles II?—That has never been put forward by the company. They had quite enough to look after in the portion of the territory they still held.

*By Mr. Royal :*

286. Is it not a fact that the Hudson's Bay Company had trading posts south of 49th parallel on the Red River?—Yes; they had trading posts south, and the North West Company had trading posts south of the line.

*By Mr. Ouimet :*

287. Will you name some of the posts?

*By Mr. Royal :*

288. Fort Graham was one?—Yes; and Georgetown was a later fort.

289. Fort Graham, which afterwards became Fort Abercrombie, was a trading post on the Red River?—Yes.

*By the Chairman :*

290. On the south coast of James Bay, how long did the company maintain posts?—Some 200 years.

291. And for 150 years their claim was never disputed?—No; not seriously.

*By Mr. DeCosmos :*

292. Do you mean disputed by the Government?—Yes; it was never disputed by the Government.

*By the Chairman :*

293. Nor subsequent to the Treaty of Utrecht, by France?—No; not as regards the confines of James and Hudson's Bays.

*By Mr. Robinson :*

294. Touching the question of boundaries, are not these boundaries authoritatively set out on the maps now in possession of the Hudson's Bay Company at the different times to which you have referred?—The boundaries appear on maps in possession of the company, known as Arrowsmith's, and these are given as the height of land.

295. Were you examined before the Arbitrators?—I was not.

296. Do you know whether these different maps were produced before the Arbitrators?—I think they must have been, many of them. I know there were several papers furnished by the company at the instance of the Government, and these maps were no doubt among them.

297. Have you been much on the Coast of James' Bay?—No.

The charter of the Hon. Hudson's Bay Company and opinions of eminent English counsel were submitted by the witness as follows:—



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 ROYAL CHARTER, &c.
 

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## THE CHARTER INCORPORATING THE HUDSON'S BAY COMPANY.

*Granted by His Majesty King Charles the Second, in the 22nd Year of his Reign, A. D. 1670.*

CHARLES THE SECOND, by the grace of God, King of England, Scotland, France and Ireland, Defender of the Faith, &c.

To all to whom these presents shall come, greeting:

WHEREAS our dear entirely beloved Cousin, Prince Rupert, Count Palatine of the Rhine, Duke of Bavaria and Cumberland, &c.; Christopher Duke of Albermarle, William Earl of Craven, Henry Lord Arlington, Anthony Lord Ashley, Sir John Robinson, and Sir Robert Vyner, Knights and Baronets; Sir Peter Colleton, Baronet; Sir Edward Hungerford, Knight of the Bath; Sir Paul Neele, Knight; Sir John Griffith and Sir Philip Carteret, Knights; James Hayes, John Kirk, Francis Millington, William Prettyman, John Fenn, Esquires; and John Portman, Citizen and Goldsmith of London; have, at their own great cost, and charges, undertaken an expedition for Hudson's Bay in the north-west part of America, for the discovery of a new passage into the South Sea, and for the finding some trade for furs, minerals, and other considerable commodities, and by such their undertaking have already made such discoveries as to encourage them to proceed further in pursuance of their said design, by means whereof there may probably arise very great advantages to us and our kingdom.

And whereas the said undertakers, for their further encouragement in the said design, have humbly besought us to incorporate them, and grant unto them and their successors the sole trade and commerce of all those seas, straits, bays, rivers, lakes, creeks and sounds, in whatsoever latitude they shall be, that lie within the entrance of the straits commonly called the Hudson's Straits, together with all the lands, countries and territories upon the coasts and confines of the seas, straits, bays, lakes, rivers, creeks and sounds aforesaid, which are not now actually possessed by any of our subjects, or by the subjects of any other Christian Prince or State.

Now know ye, that we, being desirous to promote all endeavors tending to the public good of our people, and to encourage the said undertaking, have, of our especial grace, certain knowledge and mere motion, given, granted, ratified and confirmed, and by these presents, for us, our heirs and successors, do give, grant, ratify and confirm, unto our said Cousin, Prince Rupert, Christopher Duke of Albemarle, William Earl of Craven, Henry Lord Arlington, Anthony Lord Ashley, Sir John Robinson, Sir Robert Vyner, Sir Peter Colleton, Sir Edward Hungerford, Sir Paul Neele, Sir John Griffith and Sir Philip Carteret, James Hayes, John Kirk, Francis Millington, William Prettyman, John Fenn and John Portman, that they, and such others as shall be admitted into the said society as is hereafter expressed, shall be one body corporate and politic, in deed and in name, by the name of "The Governor and Company of Adventurers of England trading into Hudson's Bay," and them by the name of "The Governor and Company of Adventurers of England trading into Hudson's Bay," one body corporate and politic, in deed and in name, really and fully forever, for us, our heirs and successors, we do make, ordain, constitute, establish, confirm and declare by these presents, and that by the same name of Governor and Company of Adventurers of England trading into Hudson's Bay, they shall have perpetual succession, and that they and their successors, by the name of The Governor and Company of Adventurers trading into Hudson's Bay, be, and at all times hereafter shall be personable and capable in law to have, purchase, receive, possess, enjoy and retain lands, rents, privileges, liberties, jurisdictions, franchises and hereditaments, of what kind, nature or quality so ever they be, to them and their successors; and also to give, grant, demise, alien, assign and dispose lands, tenements, and hereditaments, and to

do and execute all and singular other things by the same name that to them shall or may appertain to do; and that they and their successors, by the name of The Governor and Company of Adventurers of England trading into Hudson's Bay, may plead and be impleaded, answer and be answered, defend and be defended, in whatsoever courts and places, before whatsoever judges and justices and other persons and officers, in all and singular actions, pleas, suits, quarrels, causes and demands whatsoever, of whatsoever kind, nature or sort, in such manner and form as any other our liege people of this our realm of England, being persons able and capable in law, may or can have, purchase, receive, possess, enjoy, retain, give, grant, demise, alien, assign, dispose, plead, defend and be defended, do, permit and execute; and that the said Governor and Company of Adventurers of England trading into Hudson's Bay, and their successors, may have a common seal to serve for all the causes and businesses of them and their successors, and that it shall and may be lawful to the said Governor and Company, and their successors, the same seal, from time to time, at their will and pleasure, to break, change, and to make anew or alter, as to them shall seem expedient.

And further we will, and by these presents, for us, our heirs and successors, we do ordain that there shall be from henceforth one of the same company to be elected and appointed in such form as hereafter in these presents is expressed, which shall be called the Governor of the said Company; and that the said Governor and Company shall or may select seven of their number, and in such form as hereafter in these presents is expressed, which shall be called the Committee of the said Company, which Committee of seven, or any three of them, together with the Governor or Deputy Governor of the said Company for the time being shall have the direction of the voyages of and for the said Company, and the provision of the shipping and merchandizes thereunto belonging, and also the sale of all merchandizes, goods and other things returned, in all or any the voyages or ships of or for the said Company, and the managing and handling of all other business, affairs and things belonging to the said Company: And we will, ordain and grant by these presents, for us, our heirs and successors, unto the said Governor and Company, and their successors, that they, the said Governor and Company, and their successors, shall from henceforth for ever be ruled, ordered and governed according to such manner and form as is hereafter in these presents expressed, and not otherwise; and that they shall have, hold, retain and enjoy the grants, liberties, privileges, jurisdictions and immunities only hereafter in these presents granted and expressed, and no other: And for the better execution of our will and grant in this behalf we have assigned, nominated, constituted and made, and by these presents, for us, our heirs and successors, we do assign, constitute and make our said Cousin Prince Rupert, to be the first and present Governor of the said Company, and to continue in the said office from the date of these presents until the 10th November then next following, if he, the said Prince Rupert, shall so long live, and so until a new Governor be chosen by the said Company in form hereafter expressed: And also we have assigned, nominated and appointed, and by these presents, for us, our heirs and successors, we do assign, nominate and constitute the said Sir John Robinson, Sir John Vyner, Sir Peter Colleton, James Hayes, John Kirk, Francis Millington and John Portman to be the seven first and present Committees of the said Company, from the date of these presents until the said 10th day of November then also next following, and so on until new Committees shall be chosen in form hereafter expressed: And further we will and grant by these presents, for us, our heirs and successors, unto the said Governor and Company, and their successors, that it shall and may be lawful to and for the said Governor and Company for the time being, or the greater part of them present at any public assembly, commonly called the Court General, to be holden for the said Company, the Governor of the said Company being always one, from time to time to elect, nominate and appoint one of the said Company to be Deputy to the said Governor, which Deputy shall take a corporal oath, before the Governor and three or more of the Committee of the said Company for the time



being, well, truly and faithfully to execute his said office of Deputy to the Governor of the said Company, and after his oath so taken, shall and may from time to time, in the absence of the said Governor, exercise and execute the office of Governor of the said Company, in such sort as the said Governor ought to do: And further we will and grant by these presents, for us, our heirs and successors, unto the said Governor and Company of Adventurers of England trading into Hudson's Bay, and their successors, that they, or the greater part of them, whereof the Governor for the time being or his Deputy to be one, from time to time, and at all times hereafter, shall and may have authority and power, yearly and every year, between the first and last day of November, to assemble and meet together in some convenient place, to be appointed from time to time by the Governor, or in his absence by the Deputy of the said Governor for the time being, and that they being so assembled, it shall and may be lawful to and for the said Governor or Deputy of the said Governor, and the said Company for the time being, or the greater part of them which then shall happen to be present, whereof the Governor of the said Company or his Deputy for the time being to be one, to elect and nominate one of the said Company, which shall be Governor of the said Company for one whole year then next following, which person being so elected and nominated to be Governor of the said Company, as is aforesaid, before he be admitted to the execution of the said office, shall take a corporal oath before the last Governor, being his predecessor, or his Deputy, and any three or more of the Committee of the said Company for the time being, that he shall from time to time well and truly execute the office of Governor of the said Company in all things concerning the same; and that immediately after the said oath so taken he shall and may execute and use the said office of Governor of the said Company for one whole year from thence next following: And in like sort we will and grant that as well every one of the above-named to be of the said Company of fellowship, as all others hereafter to be admitted or free of the said Company, shall take a corporal oath before the Governor of the said Company or his Deputy for the time being to such effect as by the said Governor and Company or the greater part of them in any public Court to be held for the said Company, shall be in reasonable and legal manner set down and devised, before they shall be allowed or admitted to trade or traffic as a freeman of the said Company: And further we will and grant by these presents, for us, our heirs and successors, unto the said Governor and Company, and their successors, that the said Governor or Deputy Governor, and the rest of the said Company, and their successors for the time being, or the greater part of them, whereof the Governor or Deputy Governor from time to time to be one, shall and may from time to time, and at all times hereafter, have power and authority, yearly and every year, between the first and last day of November, to assemble and meet together in some convenient place, from time to time to be appointed by the said Governor of the said Company, or in his absence by his Deputy; and that they being so assembled, it shall and may be lawful to and for the said Governor or his Deputy, and the Company for the time being, or the greater part of them which then shall happen to be present, whereof the Governor of the said Company or his Deputy for the time being to be one, to elect and nominate seven of the said Company, which shall be a Committee of the said Company for one whole year from thence next ensuing, which persons being so elected and nominated to be a Committee of the said Company as aforesaid, before they be admitted to the execution of their office, shall take a corporal oath before the Governor or his Deputy, and any three or more of the said Committee of the said Company, being their last predecessors, that they and every of them shall well and faithfully perform their said office of Committees in all things concerning the same, and that immediately after the said oath so taken, they shall and may execute and use their said office, of Committees of the said Company for one whole year from thence next following: And moreover, our will and pleasure is, and by these presents, for us, our heirs and successors, we do grant unto the said Governor and Company, and their successors, that when and as often as it shall happen, the Governor or Deputy Governor of the said Company for the time being, at any time within one year



after that he shall be nominated, elected and sworn to the office of the Governor of the said Company, as is aforesaid, to die or to be removed from the said office, which Governor or Deputy Governor not demeaning himself well in his said office we will to be removable at the pleasure of the rest of the said Company, or the greater part of them which shall be present at their public assemblies commonly called the General Courts, holden for the said Company, that then and so often it shall and may be lawful to and for the residue of the said Company for the time being, or the greater part of them, within a convenient time after the death or removing of an such Governor or Deputy Governor, to assemble themselves in such convenient place as they shall think fit, for the election of the Governor or the Deputy Governor of the said Company; and that the said Company, or the greater part of them, being then and there present, shall and may, then and there, before their departure from the said place, elect and nominate one other of the said Company to be Governor or Deputy Governor for the said Company in the place and stead of him that so died or was removed; which person being so elected and nominated to the office of Governor or Deputy Governor of the said Company, shall have and exercise the said office for and during the residue of the next year, taking first a corporal oath, as is aforesaid for the due execution thereof; and this to be done from time to time so often as the case shall so require: And also, our will and pleasure is, and by these presents for us, our heirs and successors, we do GRANT unto the said Governor and Company, that when and as often as it shall happen any person or persons of the Committee of the said Company for the time being, at any time within one year next after that they or any of them shall be nominated, elected and sworn to the office of Committee of the said Company as is aforesaid, to die or to be removed from the said office, which Committees not demeaning themselves well in their said office, we will to be removable at the pleasure of the said Governor and Company or the greater part of them, whereof the Governor of the said Company for the time being or his Deputy to be one, that then and so often, it shall and may be lawful to and for the said Governor, and the rest of the Company for the time being, or the greater part of them, whereof the Governor for the time being or his Deputy to be one, within convenient time after the death or removing of any of the said Committee, to assemble themselves in such convenient place as is or shall be usual and accustomed for the election of the Governor of the said Company, or where else the Governor of the said Company for the time being or his Deputy shall appoint: And that the said Governor and Company or the greater part of them, whereof the Governor for the time being or his Deputy to be one, being then and there present, shall and may, then and there, before their departure from the said place, elect and nominate one or more of the said Company to be the Committee of the said Company in the place and stead of him or them that so died, or were or was so removed, which person or persons so nominated and elected to the office of Committee of the said Company, shall have and exercise the said office for and during the residue of the said year, taking first a corporal oath, as is aforesaid, for the due execution thereof, and this to be done from time to time, so often as the case shall require:

And to the end the said Governor and Company of Adventurers of England trading into Hudson's Bay may be encouraged to undertake and effectually to prosecute the said design, of our more especial grace, certain knowledge and mere motion we have given, granted and confirmed, and by these presents, for us, our heirs and successors, do give, grant and confirm, unto the said Governor and Company, and their successors, the sole trade and commerce of all these seas, straits, bays, rivers, lakes, creeks and sounds, in whatsoever latitude they shall lie, that lie within the entrance of the straits, commonly called Hudson's Straits, together with all the lands and territories upon the countries, coasts, and confines of the seas, bays, lakes, rivers, creeks and sounds aforesaid, that are not already actually possessed by or granted to any of our subjects, or possessed by the subjects of any other Christian Prince or State with the fishing of all sorts of fish, whales, sturgeons and all other royal fishes, in the seas, bays, inlets and rivers within the premises, and the fish therein taken, together with the royalty of the sea upon the coasts within the limits aforesaid, and all mines

royal, as well discovered as not discovered, of gold, silver, gems and precious stones, to be found or discovered within the territories, limits and places aforesaid, and that the said land be from henceforth reckoned and reputed as one of our plantations or colonies in America, called "Rupert's Land."

And further we do, by these presents, for us, our heirs and successors, make, create, and constitute the said Governor and Company for the time being, and their successors, the true and absolute lords and proprietors of the same territory, limits and places, and of all other the premises, saving always the faith, allegiance and sovereign dominion due to us, our heirs and successors, for the same to have, hold, possess and enjoy the said territory, limits and places, and all and singular other the premises hereby granted as aforesaid, with their and every of their rights, members, jurisdictions, prerogatives, royalties and appurtenances whatsoever, to them the said Governor and Company, and their successors for ever, to be holden of us, our heirs and successors, as of our manor at East Greenwich, in our County of Kent, in free and common socage, and not in capite or by Knight's service, yielding and paying yearly to us, our heirs and successors, for the same, two elks and two black beavers, whensoever and as often as we, our heirs and successors, shall happen to enter into the said countries, territories and regions hereby granted.

And further, our will and pleasure is, and by these presents, for us, our heirs and successors, we do grant unto the said Governor and Company, and their successors, that it shall and may be lawful to and for the said Governor and Company, and their successors, from time to time, to assemble themselves, for or about any the matters, causes, affairs, or business of the said trade, in any place or places for the same convenient, within our dominions or elsewhere, and there to hold Court for the said Company and the affairs thereof; and that also, it shall and may be lawful to and for them, and the greater part of them, being so assembled, and that shall then and there be present, in any such place or places, whereof the Governor or his Deputy for the time being to be one, to make, ordain and constitute such and so many reasonable laws, constitutions, orders and ordinances as to them, or the greater part of them, being then and there present, shall seem necessary and convenient for the good government of the said Company, and of all governors of colonies, forts and plantations, factors, masters, mariners and other officers employed or to be employed in any of the territories and lands aforesaid, and in any of their voyages, and for the better advancement and continuance of the said trade or traffic and plantations, and the same laws, constitutions, orders and ordinances so made, to put in use and execute accordingly, and at their pleasure to revoke and alter the same or any of them, as the occasion shall require: And that the said Governor and Company, so often as they shall make, ordain or establish any such laws, constitutions, orders and ordinances, in such form as aforesaid shall and may lawfully impose, ordain, limit and provide such pains, penalties and punishments upon all offenders, contrary to such laws, constitutions, orders and ordinances, or any of them, as to the said Governor and Company for the time being, or the greater part of them, then and there being present, the said Governor or his Deputy being always one, shall seem necessary, requisite or convenient for the observation of the same laws, constitutions, orders and ordinances; and the same fines and amerciaments shall and may, by their officers and servants from time to time to be appointed for that purpose, levy, take and have, to the use of the said Governor and Company, and their successors, without the impediment of us, our heirs or successors, or any of the officers or ministers of us, our heirs, or successors, and without any account therefore to us, our heirs or successors to be made: All and singular which laws, constitutions, orders, and ordinances, so as aforesaid to be made, we will to be duly observed and kept under the pains and penalties therein to be contained; so always as the said laws, constitutions, orders and ordinances, fines and amerciaments, be reasonable and not contrary or repugnant, but as near as may be agreeable to the laws, statutes or customs of this our realm.

And furthermore, of our ample and abundant grace, certain knowledge and mere motion, we have granted, and by these presents, for us, our heirs and successors, do grant unto the said Governor and Company, and their successors, that they and their



successors, and their factors, servants and agents, for them and on their behalf, and not otherwise, shall forever hereafter have, use and enjoy, not only the whole, entire, and only trade and traffic, and the whole, entire, and only liberty, use and privilege of trading and trafficking to and from the territory, limits and places aforesaid, but also the whole and entire trade and traffic to and from all havens, bays, creeks, rivers, lakes and seas, into which they shall find entrance or passage by water or land out of the territories, limits and places aforesaid; and to and with all the natives and people inhabiting, or which shall inhabit within the territories, limits and places aforesaid; and to and with all other nations inhabiting any the coasts adjacent to the said territories, limits and places which are not already possessed as aforesaid, or whereof the sole liberty or privilege of trade and traffic is not granted to any other of our subjects.

And we, of our further Royal favor, and of our more especial grace, certain knowledge and mere motion, have granted, and by these presents, for us, our heirs and successors, do grant to the said Governor and Company, and to their successors, that neither the said territories, limits and places hereby granted as aforesaid, nor any part thereof, nor the islands, havens, ports, cities, towns, or places thereof or therein contained, shall be visited, frequented or haunted by any of the subjects of us, our heirs or successors, contrary to the true meaning of these presents, and by virtue of our prerogative royal, which we will not have in that behalf argued or brought into question: We straitly charge, command and prohibit for us, our heirs and successors, all the subjects of us, our heirs and successors, of what degree or quality soever they be, that none of them, directly or indirectly do visit, haunt, frequent, or trade, traffic, or adventure, by way of merchandize, into or from any of the said territories, limits, or places hereby granted, or any or either of them, other than the said Governor or Company, and such particular persons as now be or hereafter shall be of that Company, their agents, factors and assigns, unless it be by the license and agreement of the said Governor and Company in writing first had and obtained, under their common seal, to be granted upon pain that every such person or persons that shall trade or traffic into or from any of the countries, territories or limits aforesaid, other than the said Governor and Company, and their successors, shall incur our indignation, and the forfeiture and the loss of the goods, merchandizes and other things whatsoever, which so shall be brought into this realm of England, or any of the dominions of the same, contrary to our said prohibition, or the purport or true meaning of these presents, or which the said Governor and Company shall find, take and seize in other places out of our dominion, where the said Company, their agents, factors or ministers shall trade, traffic or inhabit by the virtue of these our letters patent, as also the ship and ships, with the furniture thereof, wherein such goods, merchandizes and other things shall be brought and found; and one-half of all the said forfeitures to be to us, our heirs and successors, and the other half thereof we do, by these presents, clearly and wholly, for us, our heirs and successors, give and grant unto the said Governor and Company, and their successors: And further, all and every the said offenders, for their said contempt, to suffer such other punishment as to us, our heirs and successors, for so high a contempt, shall seem meet and convenient, and not be in any wise delivered until they and every of them shall become bound unto the said Governor for the time being in the sum of one thousand pounds at the least, at no time then after to trade or traffic into any of the said places, seas, straits, bays, ports, havens or territories aforesaid, contrary to our express commandment in that behalf set down and published: And further, of our more especial grace, we have condescended and granted, and by these presents, for us, our heirs and successors, do grant unto the said Governor and Company, and their successors, that we, our heirs and successors, will not grant liberty, license or power to any person or persons whatsoever, contrary to the tenor of these our letters patent, to trade, traffic or inhabit, unto or upon any of the territories, limits or places afore specified, contrary to the true meaning of these presents, without the consent of the said Governor and Company, or the most part of them: And, of our more abundant grace and favour of the said Governor and Company, we do hereby declare our will and pleasure



to be, that if it shall so happen that any of the persons free or to be free of the said Company of Adventurers of England trading into Hudson's Bay, who shall, before the going forth of any ship or ships appointed for a voyage or otherwise, promise or agree, by writing under his or their hands, to adventure any sum or sums of money towards the furnishing any provision, or maintenance of any voyage or voyages, set forth or to be set forth, or intended or meant to be set forth, by the said Governor and Company, or the most part of them present at any public assembly, commonly called their General Court, shall not, within the space of twenty days next after warning given to him or them by the said Governor or Company, or their known officer or minister, bring in and deliver to the Treasurer or Treasurers appointed for the Company, such sums of money as shall have been expressed and set down in writing by the said person or persons, subscribed with the name of the said Adventurer or Adventurers, that then and at all times after it shall and may be lawful to and for the said Governor and Company, or the more part of them present, whereof the said Governor or his Deputy to be one, at any of their General Courts or general assemblies, to remove and disfranchise him or them, and every such person and persons at their wills and pleasures, and he or they so removed and disfranchised, not to be permitted to trade into the countries, territories, and limits aforesaid, or any part thereof, nor to have any adventure or stock going or remaining with or amongst the said Company, without the special license of the said Governor and Company, or the more part of them present at any General Court, first had and obtained in that behalf, any thing before in these presents to the contrary thereof in any wise notwithstanding. And our will and pleasure is, and hereby we do also ordain, that it shall and may be lawful to and for the said Governor and Company, or the greater part of them, whereof the Governor for the time being or his Deputy to be one, to admit into and to be of the said Company all such servants or factors, of or for the said Company, and all such others as to them or the most part of them present, at any Court held for the said Company, the Governor or his Deputy being one, shall be thought fit and agreeable with the orders and ordinances made and to be made for the government of the said Company: And further, our will and pleasure is, and by these presents for us, our heirs and successors, we do grant unto the said Governor and Company, and to their successors, that it shall and may be lawful in all elections and by-laws to be made by the General Court of the Adventurers of the said Company, that every person shall have a number of votes according to his stock, that is say, for every hundred pounds by him subscribed or brought into the present stock, one vote, and that any of those that have subscribed less than one hundred pounds, may join their respective sums to make up one hundred pounds, and have one vote jointly for the same, and not otherwise: And further, of our especial grace, certain knowledge, and mere motion, we do, for us, our heirs and successors, grant to and with the said Governor and Company of Adventurers of England trading into Hudson's Bay, that all lands, islands, territories, plantations, forts, fortifications, factories or colonies, where the said Company's factories and trade are or shall be, within any of the ports or places afore limited, shall be immediately and from henceforth under the power and command of the said Governor and Company, their successors and assigns; saving the faith and allegiance due to be performed to us, our heirs and successors, as aforesaid; and that the said Governor and Company shall have liberty, full power and authority to appoint and establish Governors and all other officers to govern them, and that the Governor and his Council of the several and respective places where the said Company shall have plantations, forts, factories, colonies or places of trade within any of the countries, lands, or territories hereby granted, may have power to judge all persons belonging to the said Governor and Company, or that shall live under them, in all causes, whether civil or criminal, according to the laws of the kingdom, and to execute justice accordingly; and in case any crime or misdemeanor shall be committed in any of the said Company's plantations, forts, factories, or places of trade within the limits aforesaid, where judicature cannot be executed for want of a Governor and Council there, then in such case it shall and may be lawful for the chief

factor of that place and his Council to transmit the party, together with the offence, to such other plantation, factory or fort where there shall be a Governor and Council, where justice may be executed, or into this Kingdom of England, as shall be thought most convenient, there to receive such punishment as the nature of his offence shall deserve: And moreover, our will and pleasure is, and by these presents, for us, our heirs and successors, we do give and grant unto the said Governor and Company, and their successors, free liberty and license, in case they conceive it necessary, to send either ships of war, men or ammunition into any of their plantations, forts, factories, or places of trade aforesaid, for the security and defence of the same, and to choose commanders and officers over them, and to give them power and authority, by commission under their common seal, or otherwise, to continue to make peace or war with any prince or people whatsoever, that are not Christians, in any place where the said Company shall have any plantations, forts or factories, or adjacent thereto, and shall be most for the advantage and benefit of the said Governor and Company and of their trade; and also to right and recompense themselves upon the goods, estates, or people of those parts, by whom the said Governor and Company shall sustain any injury, loss or damage, or upon any other people whatsoever, that shall in any way, contrary to the intent of these presents, interrupt, wrong or injure them in their trade, within the said places, territories and limits granted by this Charter: And that it shall and may be lawful to and for the said Governor and Company, and their successors from time to time, and at all times from henceforth, to erect and build such castles, fortifications, forts, garrisons, colonies or plantations, towns or villages, in any parts or places within the limits and bounds granted before in these presents unto the said Governor and Company, as they in their discretion shall think fit and requisite, and for the supply of such as shall be needful and convenient to keep and be in the same, to send out of this kingdom to the said castles, forts, fortifications, garrisons, colonies, plantations, towns or villages, all kinds of clothing, provisions or victuals, ammunition and implements necessary for such purpose, paying the duties and customs for the same, as also to transport and carry over such number of men being willing thereunto, or not prohibited, as they shall think fit, and also to govern them in such legal and reasonable manner as the said Governor and Company shall think best, and to inflict punishment for misdemeanors, or impose such fines upon them for breach of their orders as in these presents are formally expressed: And further, our will and pleasure is, and by these presents, for us, our heirs and successors, we do grant unto the said Governor and Company, and to their successors, full power and lawful authority to seize upon the persons of all such English, or any other our subjects, which shall sail into Hudson's Bay, or inhabit in any of the countries, islands or territories hereby granted to the said Governor and Company, without their leave and license, and in that behalf first had and obtained, or that shall contemn and disobey their orders, and send them to England; and that all and every person or persons, being our subjects, any ways employed by the said Governor and Company, within any the parts, places and limits aforesaid, shall be liable unto and suffer such punishment for any offences by them committed in the parts aforesaid, as the President and Council for the said Governor and Company there shall think fit, and the merit of the offence shall require, as aforesaid; and in case any person or persons being convicted and sentenced by the President and Council of the said Governor and Company, in the countries, lands or limits aforesaid, their factors or agents there, for any offence by them done, shall appeal from the same, that then and in such case it shall and may be lawful to and for the said President and Council, factors or agents, to seize upon him or them, and to carry him or them home prisoners into England, to the said Governor and Company, there to receive such condign punishment as his case shall require, and the law of this nation allow of; and for the better discovery of abuses and injuries to be done unto the said Governor and Company, or their successors, by any servant by them to be employed in the said voyages and plantations, it shall and may be lawful to and for the said Governor and Company, and their respective President, Chief Agent or Governor in the parts aforesaid, to examine upon oath all factors, masters, pursers, supercargoes, commanders of castles, forts, fortifi-



tations, plantations or colonies, or other persons, touching or concerning any matter or thing in which by law or usage an oath may be administered, so as the said oath, and the matter therein contained be not repugnant, but agreeable to the laws of this realm: And we do hereby straightly charge and command all and singular our Admirals, Vice-Admirals, Justices, Mayors, Sheriffs, Constables, Bailiffs, and all and singular other our officers, ministers, liege men and subjects whatsoever to be aiding, favoring, helping and assisting to the said Governor and Company, and to their successors, and their deputies, officers, factors, servants, assigns and ministers, and every of them, in executing and enjoying the premises, as well on land as on sea, from time to time, when any of you shall thereunto be required; any statute, act, ordinance, proviso, proclamation or restraint heretofore had, made, set forth, ordained or provided, or any other matter, cause or thing whatsoever to the contrary in anywise notwithstanding.

In witness whereof we have caused these our Letters to be made Patent.

Witness ourselves at Winchester, the second day of May, in the two-and-twentieth year of our reign.

By Writ of the Privy Seal.

PIGOTT.

JOINT OPINION OF THE ATTORNEY AND SOLICITOR-GENERAL, SIR  
DUDLEY RYDER AND SIR WILLIAM MURRAY, ON THE HUDSON'S  
BAY COMPANY'S CHARTER, 1748.

To the Right Honorable the Lords of a Committee of His Majesty's Most Honorable  
Privy Council.

May it please your Lordships:—

In humble obedience to Your Lordships' Order in Council of the 4th of February last, representing that by an Order in Council, bearing date the 26th day of January last, there was referred to Your Lordships the humble petition of Arthur Dobbs, Esq., and the rest of the Committee appointed by the subscribers for finding out a passage to the Western and Southern Ocean of America for themselves and the other adventurers, and that Your Lordships have taken the said petition into consideration, were pleased to refer the same to us to consider thereof, and to report our opinion hereupon to Your Lordships.

Which petition sets forth that the petitioners in the year 1746 did at their own costs and charges fit out two ships upon an expedition in search of the north-west passage to the Western and Southern Ocean of America, in order to extend the trade and increase the wealth and power of Great Britain by finding out new countries and nations to trade with, as well in the great north-western continent of America, beyond Hudson's Bay, as in countries still further distant and hitherto unknown to the Europeans, and also to many large and populous islands in that great western ocean.

That the petitioners, by means of the said expedition, have made several discoveries of bays, inlets and coasts, before unknown, and have a reasonable prospect of finding a passage to the Southern Ocean by sea, although the discovery may not be perfected without repeated trials, upon account of the difficulties and dangers of searching different unknown inlets and straits, and sailing through new seas, and of procuring men of resolution, capacity and integrity to pursue it effectually.

That the petitioners find that the reward of £20,000 given by Parliament is not adequate to the expense the adventurers must be at to perfect the discovery, they having already expended above half that sum in their late expedition.

That the petitioners find that upon a former attempt His Majesty's predecessor, King Charles the Second, as a suitable encouragement granted a Royal Charter to the Governor and Company of Adventurers of England trading to Hudson's Bay,



making them a body corporate forever, upon their petition setting forth that they had, at their own proper costs and charges, made an expedition to discover a new passage into the South Sea, and for finding some trade of furs, mines, and other commodities, and gave them the sole property of all the lands they should discover together with an exclusive trade to all the countries within Hudson's Straits not in possession of any of his subjects, or of any other Christian power, with the royalties of mines, minerals, gems and royal fish, to enable them to find out the passage, extend the trade, and to plant the countries they should discover, paying two white and two black beavers whenever and as often as His Majesty and his successors should enter their territories, granting to them the greatest privileges as lords proprietors, saving only their faith and allegiance to the Crown of Great Britain.

The petitioners beg leave to observe that the said Company have not since effectually or in earnest searched for the said passage, but have rather endeavored to conceal the same and to obstruct the discovery thereof by others; nor have they made any new discovery either upon the coast or in the inland countries adjoining to Hudson's Bay since the grant of their charter, nor have they taken possession of or occupied any of the lands granted to them, or extended their trade into the inland parts of the adjoining continent, nor made any plantations or settlements except four factories and one small trading house, in all which they have maintained in time of peace about one hundred and twenty persons, servants to the Company, nor have they allowed any other of His Majesty's subjects to plant, settle, or trade in any of the countries adjoining to the Bay, granted to them by their charter, yet have continued at or allowed the French to encroach, settle, and trade within their limits on the south side of the Bay, to the great detriment and loss of Great Britain.

That the petitioners being desirous to pursue the discovery of the passage to the Southern Ocean of America by land or by water, will engage not only to prosecute the same until it be thoroughly discovered as far as practicable, but also to settle and improve the land in all the countries on that northern continent, by making alliance with and civilizing the natives, and incorporating with them, and by that means lay a foundation for their becoming Christians and industrious subjects of His Majesty and also extend the British trade into the heart of that northern continent around the Bay, and into such countries as they may discover beyond it in the Western Ocean and to use their utmost endeavours to prevent the French encroachments upon the British rights and trade in that continent.

In order, therefore, to enable the petitioners to prosecute and bring to perfection so valuable a discovery, and to civilize the natives and settle the lands without loss of time, and that the trade and settlement of such extensive countries may not be longer delayed or perhaps for ever lost to His Majesty and his successors by the encroachments of the French.

The petitioners most humbly pray that his Majesty would be graciously please to incorporate the petitioners and the other subscribers for finding out the said passage, or such of them and such other persons as they shall engage in the said undertaking, and their successors for ever, and grant to them the property of all the lands they shall discover, settle and plant in a limited time in the northern continent of America, adjoining to Hudson's Bay and Straits, not already occupied or settled by the present Company of Adventurers trading to Hudson's Bay, with the like privileges and royalties as were granted to the said Company, and that His Majesty would be pleased to grant unto the petitioners (during the infancy of their settlements), an exclusive trade, for such a term of years as may be granted to discoverers of new arts and trade, to all such countries into which they shall extend their trade by land or by water, not already granted by Act of Parliament to other companies, reserving to the present Company of Adventurers trading to Hudson's Bay all the forts, factories and settlements, they at present occupy and possess, with a reasonable district round each of their possessions and factories; or that his Majesty would be pleased to grant the petitioners such other relief and encouragement as to His Majesty in his great wisdom should seem meet.

We have taken the same into consideration, and have been attended by counsel both in behalf of the petitioners and the Hudson's Bay Company, who oppose the petition as it interferes with their Charter.

The petitioners insisted on two general things; that the Company's Charter was either void in its original creation, or became forfeited by the Company's conduct under it.

That the petitioners have by their late attempts to discover the North-West Passage and Navigation in those parts merited the favour petitioned for.

As to the first, the petitioners endeavoured to show, that the grant of the country and territories included in the Company's Charter was void for the uncertainty of its extent, being bounded by no limits of mountains, rivers, seas, latitude or longitude, and that the grant of the exclusive trade within such limits as there were, was a monopoly, and void on that account.

With respect to both these, considering how long the Company have enjoyed and acted under this charter without interruption or encroachment, we cannot think it advisable for his Majesty to make any express or implied declaration against the validity of it, till there has been some judgment of a Court of Justice to warrant it; and the rather because if the Charter is void in either respect, there is nothing to hinder the petitioners from exercising the same trade which the Company now carries on; and the petitioners' own grant, if obtained, will itself be liable in a great degree to the same objection.

As to the supposed forfeiture of the Company's Charter by non-user or abuser, the charge upon that head is of several sorts; viz.: That they have not discovered nor sufficiently attempted to discover the North-West Passage into the South Seas or Western Ocean.

That they have not extended their settlements through the limits of their Charter. That they have designedly confined their trade to a very narrow compass, and have for that purpose abused the Indians, neglected their own Forts, ill-treated their own servants, and encouraged the French.

But on consideration of all the evidence laid before us, by many affidavits on both sides (herewith enclosed), we think these charges are either not sufficiently supported in point of fact, or in a great measure accounted for from the nature or circumstances of the case.

As to the petitioners' merit, it consists in the late attempts made to discover the same passage, which, however, as yet unsuccessful in the main point, may probably be of use hereafter in that discovery, if it should ever be made, or in opening some trade or other, if any should hereafter be found practicable; and have certainly lost the petitioners considerable sums of money.

But as the grant proposed is not necessary in order to prosecute any future attempt of the like kind, and the Charter of the Hudson's Bay Company does not prohibit the petitioners from the use of any of the ports, rivers, or seas included in their Charter, or deprive them of the protection of the present settlements there, we humbly submit to your Lordships' consideration whether it will be proper at present to grant a Charter to the petitioners, which must necessarily break in upon that of the Hudson's Bay Company, and may occasion great confusion by the interfering interest of two companies setting up the same trade against each other in the same parts and under like exclusive Charters. All which is humbly submitted to your Lordships's consideration.

August 10th, 1748.

D. RYDER,  
W. MURRAY.



## LEGAL OPINIONS ON THE HUDSON'S BAY COMPANY'S CHARTER.

OPINION OF SIR D. RYDER AND SIR W. MURRAY, 1748.

**JOINT OPINION** of the Attorney and Solicitor-General, SIR DUDLEY RYDER and SIR WILLIAM MURRAY, on a Petition which had been referred to the Privy Council praying that the Petitioners might be incorporated, and that the Crown would grant to them the Property of all the lands they should discover, settle, and plant in North America, adjoining to Hudson's Bay, not already occupied and settled by the Hudson's Bay Company, with the like Privileges and Royalties as were granted to that Company, with the Right of exclusive Trade. 1748.

\* \* \* We have taken the same (petition) into consideration, and have been attended by counsel both on behalf of the petitioners and the Hudson's Bay Company who opposed the petition as it interferes with their Charter. The petitioners insisted on two general things: that the Company's Charter was either void in its original creation, or became forfeited by the Company's conduct under it; that the petitioners have, by their late attempts to discover the North-West passage and navigation in those parts, merited the favour petitioned for.

As to the first, the petitioners endeavoured to show that the grant of the country and territories included in the Company's Charter was void for the uncertainty of its extent, being bounded by no limits of mountains, rivers, seas, latitude or longitude and that the grant of the exclusive trade within such limits as these were, was a monopoly, and void on that account. With respect to both these, considering how long the Company have enjoyed and acted under this Charter without interruption or encroachment, we cannot think it advisable for his Majesty to make any express or implied declaration against the validity of it until there has been some judgment of a Court of Justice to warrant it; and the rather because, if the Charter is void in either respect, there is nothing to hinder the petitioners from exercising the same trade which the Company now carries on. And the petitioners' own grant, if obtained, will itself be liable in a great degree to the same objection. As to the supposed forfeiture of the Company's Charter by non-user or abuser, the charge upon that head is of several sorts, viz., that they have not discovered, nor sufficiently attempted to discover, the north-west passage into the South Seas or Western Ocean that they have not extended their settlements through the limits of their Charter that they have designedly confined their trade to a very narrow compass, and have for that purpose abused the Indians, neglected their own forts, ill-treated their own servants, and encouraged the French.

But in consideration of all the evidence laid before us by many affidavits on both sides (herewith enclosed), we think these charges are either not sufficiently supported in point of fact, or in a great measure accounted for from the nature and circumstance of the case. As to the petitioners' merit, it consists in the late attempts made to discover the same passage, which, however, as yet unsuccessful in the main point, may probably be of use hereafter in that discovery, if it should ever be made, or in opening some trade or other if any should hereafter be found practicable, and have certainly cost the petitioners considerable sums of money. But, as the grant proposed is necessary in order to prosecute any further attempt of the like kind, and the Charter of the Hudson's Bay Company does not prohibit the petitioners from the use of any of the ports, rivers, or seas included in their Charter, or deprive them of the protection of their present settlements there, we humbly submit to your Lordships' consideration whether it will be proper at present to grant a Charter to the petitioners which must necessarily break in upon that of the Hudson's Bay Company, and may occasion great confusion by the interfering interests of two Companies setting up the same trade against each other in the same parts under the like exclusive Charter.

All which is humbly submitted to your Lordships' consideration.

August 10th, 1748.

D. RYDER,  
W. MURRAY.



## COPY, FURTHER QUERIES AND OPINIONS OF MR. HOLROYD.

*Queries.*

1. Whether any objection can be made to the grant of the soil contained in the Charter, and whether the grant will include all the country, the waters of which run into Hudson's Bay, as ascertained by geographical observations?

*Opinion.*

To 1st. I am not aware of any objection that appears to me to be a valid one to the grant of the soil contained in the Charter. I think the grant will include all the countries, the waters of which run into Hudson's Bay, as ascertained by geographical observation, that were not at the time of the Charter actually possessed by the subjects of any foreign prince, and which have not been possessed of any foreign trade previous to actual or virtual possession thereof being taken under the Charter, or by, or on behalf of the Crown of England.

2nd. Whether as proprietors of the soil, the Company may exclude all other persons from residing therein, and dispossess the Canadian traders of the posts already occupied by them and used for the purposes of trade with the native Indians.

3rd. Though the Company may not be entitled to prevent other persons from using the navigation of Hudson's Bay, or of navigable rivers within their territories, are they entitled to prevent all persons from landing upon the shores of the bay, or the banks of the rivers, and in those places where the navigation of a river is interrupted by falls; may the company prevent any person from passing over their land for the purpose of transporting himself and his merchandise to another point, where the river may again become navigable.

To 2nd and 3rd. I think that as proprietors of the soil of the Company may not exclude all other persons from residing thereon, and dispossess the Canadian traders of the posts occupied by them, and used for the purposes of trade with the native Indians, notwithstanding the grant of a sole trade and the consideration mentioned in the Charter for the same, and though such a grant for such consideration may formerly have been thought good, yet, I am inclined to think that all the King's subjects have a right there, and that the grant of an exclusive trade is in that respect void. See *Skin.*, 334, 361. It appears to me, too, that the grant of the territory must be taken subject to the rights of the King's subjects to go into that country to trade there, and to their rights of passing and repassing through the country for that purpose, and doing what is necessary for the enjoyment of their rights of trade in like manner as they would be entitled to it if the soil had remained the King's, and the grant had not been made. Though these may be regulated in a reasonable manner by the King or his grantees of the territory and soil, yet I am inclined to think the King's subjects cannot by law be deprived of their rights of trading there, and incidentally of doing what is necessary and reasonable for that purpose. I am inclined to think therefore that the King's subjects have, as necessarily to their right of trade, a right to pass and cross along the navigable rivers, and in those places where the navigation is interrupted by falls, to pass over the the Company's land in a proper course for the purpose of transporting themselves and their merchandise to another point where the river may again become navigable. I think therefore that the Company have no right to prevent the Canadian traders from doing these things, or from landing on the banks of the bays or the shores of the rivers.

4th. Whether the Company by virtue of their right of property may prevent the Canadian traders from passing through their territories to arrive at Athabaska, or other countries not included in the Charter, or will the use which these traders have enjoyed for nearly forty years of travelling through the Company's territories entitle them to its continuance. You will observe that it is impossible for the Canadian traders to traverse the company's territories without cutting wood or using the water

found in the course of their journey and pitching their tents upon the Company lands, and on this head you will further please to say whether there are rights which the Canadian traders can acquire by any, and what length of possession?

To 4th.—I think that the Company have not any right by law to prevent this. In the infancy of a country, all these things may be necessary to be done in order to exercise the right of trade, and so long as they are necessary, and without which the country cannot be traversed for the purposes of trade, so long as the right to do these things are, as it seems to me, upon the principles of reason and law and from necessity increased to the right of trade, without which it cannot exist. I am inclined to think, therefore, that until these conveniences are otherwise provided, can be otherwise had, traders may, in traversing the Company's territories, provide themselves in a reasonable manner with what is necessary for fire, water and temporary habitation, though this be done upon and from lands granted to or appropriated to other purposes. Twenty years exclusive enjoyment will give, I think, a right of possession, from which the party cannot be removed by ejectment or otherwise than by a real action, and 60 years like enjoyment of any lands or tenements will give, I think, a complete title against the Company. No action will, however, lie in the courts of law in England to recover lands or tenements abroad, or for trespass committed upon them. *See 4 Term, Rep. 503.*

5. Supposing the Company entitled to dispossess the Canadian traders and to maintain an exclusive right to trade within their territories, what steps do you advise as the best to be purchased for making the right effectual?

To 5th. Supposing the Company were so entitled, this is a query embracing considerations of prudence, policy and discretion, and which must depend, in every instance, upon the circumstances attending it and connected with it, which I, therefore, cannot take upon me to answer further than that an application may be made advisable to the King's Ministers upon the subject, or to the King in Council in whom the original jurisdiction as to the boundaries of our Provinces in America is said to be rested. *See 1, Vez. 4, 44.*

6. Does it appear to you that the civil and criminal jurisdiction granted to the Company, is valid?

To 6th. It appears to me that the civil and criminal jurisdiction granted to the Company is valid, but I am not so clear in this as to advise it being carried into execution in any case of life or limb, without the express authority of the Crown in the particular instance or more explicit powers by Charter.

7. If valid, how is it to be exercised? May the Company erect Courts of Justice or authorize any person or persons to administer the laws of England as they might be administered in England?

To 7th. I think it can only be exercised by the Governor and his Council. The Company cannot, I think, erect Courts of Justice or authorize any person or persons to administer the laws of England as they might be administered in England.

8. May the Company appoint a Sheriff to execute the judgment of their Courts and to do the duty of a Sheriff as performed in England?

To 8th. I incline to think that the Governor and his Council, who have the power of judicature, may as incident to that power, appoint such an officer, who, in similar cases is, I believe, usually called the Provost Marshall. *See 4, Meod., 222.*

9. May such Sheriff, in case of resistance to his authority, call out the population to his assistance, and may the Company put arms in the hands of their servants and those who live under them, as well as for their defence against attacks as to assist in enforcing the judgments of their Courts?

To 9th. I incline to think that all this may lawfully be done.

10. Supposing the Company to hold Courts of Justice, who will be subject to their jurisdiction, will it be only their own servants and persons residing within their territories by their permission, or will these words of the Charter, viz.: those that live under them—include Canadian traders who have established themselves intrusively on the lands of the Company, and who dispute their rights?



To 10th. I think that all those persons including the Canadian traders will be subject to the jurisdiction of the Governor in Council.

11. Supposing these traders were to resist the Sheriff in the execution of a warrant and death should ensue, would the servants of the Company or others acting in support of the warrant be responsible for the consequences, and in like manner would the servants of the Company be responsible for the consequences of a forcible resistance against an attempt of the Canadian traders to trespass on the Company's territories.

To 11th. I am inclined to think that the servants of the Company or others acting in support of the warrant, supposing it to be made out in proper form, would be equally protected from the consequences of the execution of the warrant with persons executing on similar civil or criminal warrant in England. The servants of the Company may resist with force, not directly tending to the loss of life or limb, any illegal attempt of the Canadian traders to trespass upon the Company's property, but a man's house, which is his castle, he may defend, even with the direct destruction of life if he cannot otherwise defend his possession of it, but not to that extent with respect to lands or other property, as to which he must appeal to the laws in preference to taking away life for its protection.

11. Supposing that in the course of such resistance or trespass on the part of the Canadian traders, any of them should be guilty of crime or misdemeanor, would the Company be justified in terms of a clause in their Charter above cited, in transmitting the party or parties to England, and could the case there be brought to trial so as to subject the offenders to the punishment prescribed by law for the same offence in England.

To 12th. I think the Company would not be justified in sending the parties to England in this case, unless in cases where a party is authorized by an Act of Parliament to be seized and sent to England for trial. The cause of seizure of the persons and sending them to England in the Charter is, I think, invalid.

13. Seeing the territories within which criminal jurisdiction is given by the 43rd Geo. III, c. 138, to the Courts of Lower and Upper Canada, are "the Indian Territories or parts of America not within the limits of either the said Provinces," can his Act be stated to give to these Courts jurisdiction within the territories of the Hudson's Bay Company?

To 13th. I am inclined to think that this Act does not extend to give to these Courts jurisdiction over the territories belonging to and in the possession of the Hudson's Bay Company. It extends, I think, only to the Indian Territories, not to those belonging to England or held of its Crown.

14. If the Company were to erect Courts for the punishment of crimes, or if they were to send home offenders to England to be tried, would the criminal jurisdiction given to the Courts of Lower and Upper Canada by the 43rd Geo. 3rd, c. 138 (supposing it to extend to their territories) be thereby superseded?

To 14th. Supposing the criminal jurisdiction given by Act of Parliament to the Courts of Upper and Lower Canada, to extend to these territories of the Hudson's Bay Company, I think that it would not be superseded by any Act that the Hudson's Bay Company might do.

15. There are partners of the North-West Company resident in London, who concern in sending persons from Canada into the Company's territory, for the purpose of trade. Does it appear to you that the Company can bring and maintain a special action of damages on the case in England against such partners of the North-West Company resident in London?

To 15th. I think that no such action is maintainable against them in England for any of the acts above alluded to in the case.

16. What would be the effect in such an action if it could be established that the traders employed by the North-West Company, not content with a fair participation in the trade, are in the practice of maltreating the native Indians to deter them from dealing with the Hudson's Bay Company, and likewise of using violence and threats to intimidate the servants of the Hudson's Bay Company from prosecuting their trade?



To 16th. If the action was maintainable against the above partners, these circumstances would, I think, increase the damages.

17. Nothing is said in the Charter in regard to the amount of the capital of the Company, or the manner of raising it. But in the year 1700 the original stock of the Company subscribed at the date of its Charter, was trebled out of the profits by adding the amount of the latter to the former, without dividing them. In the year 1720 it was again trebled, and a further subscription was opened, but it does not appear that subscriptions were received from any persons excepting proprietors of stock, who were allowed to subscribe in proportion to their stock.

It is now proposed to raise a further capital, for which purpose two modes have been suggested :—

Firstly : To offer to each proprietor who may be inclined to subscribe permission so to do in a given proportion to his existing stock, subject to the condition of his declaring his acceptance of this offer within a limited time, and in case of his failure or refusal to accept such offer, then his share of the new stock to be offered to the other stockholders, and in case of their failure or refusal to accept it, then such share of the new stock to be offered to public sale to the highest bidder.

Secondly : It has been proposed to make a call on the present stockholders, *pro rata* of their stock, with a declaration that, if they do not satisfy the call, their stock will be forfeited.

You are requested to say whether either mode is within the powers given to the Company by their Charter?

The first of these modes is, I think, within the powers given to the Company by their Charter, but not the 2nd.

(Signed),

G. S. HOLROYD,

Weymouth, 1st October, 1812.

#### COPY, QUERIES AND OPINIONS OF MR. CRUISE.

1. Does the right of the Company to the property of the soil appear to be open to any material objection?

Some very difficult points arise in this case, which have not been discussed in modern times, 1st, as to the validity of the exclusive right of trading and fishing granted by the Charter. In the case of the *East India Company v. Sandys*, which arose in 32, Charles II, reported by Skinner 132, and Shower v 2, 366, but more fully in the State trials v. 7, 494, where the *East India Company* brought an action on the case against Mr. Sandys, for invading their rights under several Charters to the sole and exclusive trade to the East Indies. It was held by the Court of K. B., after great consideration, that the *East India Company* had an exclusive right, by their Charter to the trade of the East Indies, and judgment was given for them. Lord Chief Justice Jeffries gave his opinion at great length, and stated that, though by the law of England monopolies were prohibited, yet societies to trade such as the ports to certain places were exclusive of others, were no monopolies, but were allowed to be erected here, and were strengthened by usage and practice in all times.

The period when this judgment was given and the characters and principles of the judges who gave it, are circumstances which do not add to its authority. But in the case of *Nightingale v. Bridges*, reported by Shower, v. 1, 135, which arose in 21 William and Mary, a time when the prerogative had suffered a considerable diminution, and Lord Holt was Chief Justice, the Court of K. B. did not deny the validity of the judgment in the case of the *East India Company v. Sandys*, though they held that a clause in the Charter of the *Royal African Company*, by which certain regions in Africa were granted to them for 1,000 years, prohibiting other persons to trade within their limits, under pain of imprisonment and forfeiture of their ships and goods, and giving power to enter into and search and seize their ships and goods

was void, because the King could not, by letters patent, create a forfeiture of or any way by his own act confiscate a subject's property. Although the decision in the case of the East India Company *v.* Sandys does not appear to have ever been directly contradicted, yet I apprehend that the doctrine then established is not now considered as law. Lord C. B. Comyns appears to have doubted it, Digest Tit. Trade, D 1, and it is said in Bacon's Ab. Tit. Merchant, that nothing can exclude the subject from trade but an Act of Parliament.

As to the exclusive right of fishing, it has been long settled (*vide* Warren *v.* Matthews, 6 Mod. Rep. 73) that the King's grant of an exclusive fishery in the sea or in rivers where the tide flows and ebbs, only extends to royal fish, namely, whale and sturgeon, and does not exclude any British subject from taking all other kinds of fish.

There is, however, a very important difference between the Charters upon which the case of the East India Company *v.* Sandys arose, and the Charter of the Hudson's Bay Company. In the former, only an exclusive right to trade was given, whereas, in the latter, the Company are made proprietors of the soil, to hold to them and their successors forever, of the Crown in fee and common socage. This places the Governor and Company in a very different situation from that in which the East India Company stood.

I am, therefore, of opinion, 1st. That no objection can be made to the grant of the soil contained in the Charter; and that as proprietors of the soil they may exclude all persons from entering their territories and trading therein. The right of fishing in the rivers where the tide does not flow, also belongs to the Company, as proprietors of the banks, and they may in that character prevent those who fish in the sea or in the mouths of the rivers from landing their fish. *Ipswich v. Brown*, Sar. 11, 14.

2. Will that right be held to include all the country, the waters of which run into Hudson's Bay?

The description of the lands granted is, by reference to the grant of an exclusive trade, where the words are "All those seas, straits, bays, rivers, lakes, creeks, sounds, in whatsoever latitude they shall be, within the entrance of the straits commonly called Hudson's Straits, together with all the lands and territories upon the countries, coasts, and confines of the seas, bays, lakes, rivers, creeks and sounds aforesaid."

The objection to this description is that it is too general, there being no boundaries mentioned. But I apprehend that as the Charter is granted by the King's especial grace, certain knowledge and mere motion, it would be construed liberally, and in favor of the grantees *vide* Bacon's Al., vol. 5, 603, 8vo. edition, and that therefore the opinion of the geographers would be adopted, namely, that all the countries lying upon the waters which run into Hudson's Bay are included within the Charter for therein it will be ineffectual.

3. Are the Company as proprietors of the soil entitled to prevent the British subjects from building and occupying house, cutting wood and doing other acts of property?

The Hudson's Bay Company as proprietors of the soil are clearly entitled to exclude all persons as well British subjects as foreigners from occupying any part of their land.

4. Are they entitled to dispossess the Canadian traders of the posts already occupied by them intrusively without legal title?

They may certainly dispossess the Canadian traders by legal process of the posts occupied by them, and may pull down any buildings erected by them.

5. In this case, what are the legal steps necessary for carrying into effect the rights of the Company, *vide* answer to Query 9.

Supposing that those clauses of the Charter by which the exclusive navigation of the Hudson's Bay, and the exclusive trade of the adjacent country, is granted to the Company, should be found of no avail, how far are other British subjects entitled



to make use of the internal navigation of rivers and creeks which run through the Company's Territories?

Supposing the grant of an exclusive trade to be void, as a monopoly, still the Company, as proprietors of the soil, may exclude all persons from navigating the inland rivers and creeks within their limits.

7. On the other hand, how far have the Company a right, as proprietors of the land, to prevent that trespass which must be committed on their property by other traders, in using the navigation of these rivers where it is interrupted by falls and where it is necessary to carry the goods, etc., by land.

The Company, as proprietors of the soil, have a right to protect and preserve their property, and to use all lawful means for that purpose.

8. Supposing a forcible attempt on the part of the Canadian traders to trespass where they have no right to go or to maintain their intrusive and illegal professions, would the servants of the Hudson's Bay Company be legally responsible for the consequence of asserting by force the rights of the Company?

If the Canadian traders should be guilty of any violence, the proper remedy will be by action or indictment.

9. Is the civil and criminal jurisdiction granted to the Company valid, and, if valid, to what extent will the Governors and Council appointed by the Company be authorized to punish offences against the law, and will their power be limited to the servants of the Company only, or will it extend to settlers holding lands by grant from the Company, or to any other description of people residing in the Territory?

The civil and criminal jurisdiction granted by the Charter may be exercised by the Company by authorizing their Governor and Council to hold a Court of Justice, in which the English law may be administered, and by the appointment of a Sheriff to execute the judgments of such Court, the individuals subject to the jurisdiction of this Court, will be according to the words of the Charter: "All persons belonging to the said Governor and Company, or that shall live under them," so that as to Canadians entering the Territories of the Company, and violating their property, the prosecution must be either in the Courts of Upper or Lower Canada, or in the Courts of Westminster, and I think that a special action on the case would lie, and might be brought by the Company in the Courts of Upper Canada. As to the Courts of Lower Canada, they proceed according to the French law, and, therefore, I cannot point out the mode in which redress may be obtained in them. If any of the persons who are partners in the North-West Company are resident in England, and it could be proved that the traders violating the territories and properties of the Hudson's Bay Company acted by the authority and direction of the Hudson's Bay Company, may bring a special action on the case in Westminster against them in the same manner as the East India Company brought an action of that kind against Mr. Sandys.

(Signed)

WILLIAM CRUISE.

LINCOLNS INN, 22nd February, 1812.

#### COPY QUERIES AND FURTHER OPINIONS OF MR. WM. CRUISE.

I. You are of opinion that the Hudson's Bay Company, as proprietors of the soil, are clearly entitled to exclude all persons from occupying any part of their lands, and that they may certainly dispossess the Canadian traders by legal process of the posts occupied by them.

Now, under this head the Hudson's Bay Company wish to be informed.

1. What is the legal process by which this may be effected? Is it to be done by holding a Court of Justice, and by the appointment of a Sheriff to execute the judgments of such Court, which it is stated they may do in your answer to Query 9th? But it is also stated that the individuals subject to the jurisdiction of such court, will



be "all persons belonging to the said Governor and Company, or *that shall live under them.*" Will these last words apply to Canadian traders who have established themselves upon the territory, but who reside there in opposition to the Company and dispute their rights altogether.

I think the words of the charter "or who shall live under them," must be construed to extend to Canadian traders, or any other persons residing within the territories of the Company, or even passing through. For otherwise the words of the charter would be nugatory. Canadian traders might enter the territories of the Company, commit depredations on their property and disturb the peace of the country, without being amenable to their laws, this would be absurd.

2. The Hudson's Bay Company are further desirous of knowing what is the extent of the civil and criminal jurisdiction which may be exercised by a Court of Justice, established under their authority. Will it be warranted in trying all sorts of felonies and inflicting capital punishments, or to what offences will their power extend?

It is admitted by all legal writers that the Crown has a right to erect Courts of Justice; but that such Courts must proceed according to the rules of the Common Law. In this case the Crown has already authorized the Hudson's Bay Company to hold a Court of Justice, with power to judge in all causes, whether civil or criminal, and therefore the Governor and his Council, residing in America, may try felonies and inflict capital punishments. This appears clearly from the clause in the charter, page 184: That in case any crime is committed where there is no Governor and Council, the Chief Factor of that place shall transmit the party to where there shall be a Governor and Council, where justice may be executed.

3. Supposing your opinion to be that the words "or that shall live under them" will apply to the Canadian traders; and supposing the Sheriff to proceed under a warrant from a Court of Justice, to be held by the authority of the Governor and Council, to dispossess any of the Canadians from their intrusive possessions, and that the intruders shall resist; will the Sheriff be justified in using force; and in case death should ensue, will the Sheriff or any other party concerned be liable to indictment in the Courts of Upper or Lower Canada, under the 43 Geo. III, c. 138?

A Sheriff duly appointed by a Governor and Council residing at Hudson's Bay, would have the same power and authority as a Sheriff of an English County; and such a Sheriff would not be liable to an indictment in the Courts of Upper or Lower Canada. The introductory clause of the Statute 43 Geo. III, c. 138, shews that the intention of the Legislature was only to give a power of acting where a crime was not cognizable by any jurisdiction whatever; by which means great offences went unpunished, and certainly did not affect the power of erecting a Court of Justice given to the Hudson's Bay Company. Now, if a Court of Justice be established in Hudson's Bay, the jurisdiction given by the above Act to the Courts of Upper and Lower Canada will become unnecessary.

4. Will the Company be warranted in establishing and maintaining a body of armed men to defend their exclusive right to the soil and to act as a police guard and support the Sheriff whom they appoint in the discharge of his duty; and if such armed body may be established, may the Company direct it to be subject to and be governed by the British articles of war.

I do not think the Company would be warranted in establishing an armed force. The Sheriff, if resisted, may call out the *posse comitatus*, which comprises all the gentlemen, yeomen, laborers, servants, apprentices, and all others above the age of 15 years, within the county, who will be obliged to assist him in enforcing the judgments of the Court.

5. Will the Company be entitled to prevent the Canadian traders from continuing to use the roads or tracts which they have traversed through the Company's territories to arrive at Athabaska or the country west of the great chain of mountains, which bound the Company's territory, or will the use which they have enjoyed of travelling through the Company's territories, or such use for any and what length of time, entitle them to its continuance? You will observe that it is impossible for

the Canadian traders to traverse the Company's territories without cutting wood for firewood, using the water found in the course of their journey, and pitching their tents upon the Company's territory, and you will further say whether these are rights which the Canadian traders can acquire by any and what length of possession?

If a highway were made through the Province, all British subjects would have a right to travel on it; but a track made by the Canadians is not a highway, and no prescriptive right to traverse the territories of the Company, or to cut wood or pitch tents, can exist in this case, because such a prescriptive must be founded on immemorial usage.

6. There are individuals of the North-West Company who reside in Upper Canada, and also in the City of London. The Hudson's Bay Company would not incline to proceed against them by action on the case in Upper Canada from the influence of the Canadian traders there, and from the effect which that influence will have upon a Provincial jury, if not upon the judge. But they would wish to bring a special action on the case against the partners of the North-West Company who reside in London, and they will be much obliged to you for any suggestions which may enable them by its consequences to prevent the Canadian traders from continuing to intrude upon their territories. They will have no difficulty, they believe, in proving that their territories are violated by the authority and direction of the North-West Company.

I can add nothing to what I have said on my former opinions on this point. Since the case of the East India Company *vs.* Sandys I have not been able to find any other of the same nature. I should, as to this point, recommend the opinion of a special pleader should be taken.

II.—There is another point which is connected with the former, and that is the pecuniary means of enabling the company to avail themselves of all the rights conferred upon them by their charter.

There is no restraint or limit imposed by the charter with respect to the amount of the capital stock of the company, or the manner of raising it. In the year 1700 the original stock of the company, subscribed at the date of its charter, was trebled out of the profits, by adding the amount of the latter to the former, without dividing them. In the year 1720, it was again trebled and a further subscription was opened, but it does not appear that the subscriptions were received from any persons excepting proprietors of stock, who were allowed to subscribe in proportion to their stock.

In the view of raising a further capital, two modes have been suggested.

First.—To offer to each proprietor, who may be inclined so to do, permission to subscribe in a given proportion to his existing share of stock, subject to the condition of his declaring his acceptance of this offer within a limited time; and in case of his failure or refusal to accept such offer, then his share of the new stock to be offered to the other stockholders, and in case of their failure or refusal to accept it, then such share of the new stock to be offered to public sale to the highest bidder.

Secondly.—To make a call on the present stockholders *pro rata* of their stock, with the declaration that if they do not satisfy the call, their stock will be forfeited.

You are requested to say whether either mode is within the powers given to the company by their charter?

The charter is silent as to the quantum of capital stock which the company may create, or the mode of raising it, and therefore I see no objection to the company calling on the proprietors for an additional sum, and, in case of refusal, to offer new shares to public sale. But I do not see how the company can forfeit the stock of the present proprietors, though I understand that the York Buildings Company have lately acted on that principle, and have forfeited the shares of those proprietors who refused to advance an additional sum of money. This should be enquired into.

III.—There is a third point arising out of an Act of Parliament which appears to have been passed in the reign of William and Mary, of which a copy is herewith laid before you. This Act confirmed the charter of the Hudson's Bay Company and the rights and privileges thereby granted, but its endurance was limited to seven years.



and you are requested to say whether this Act can be stated to have now any, and what effect with reference to the Hudson's Bay Company and their charter.

The Act is clearly expired, and can now have no effect. If a renewal of it could be obtained, it would be extremely advantageous to the company, as they might then seize all the property of the North-West Company found within their territories, under the clause in page 181 of the charter.

(Signed) WILLIAM CRUISE.

LINCOLNS INN, 18th March, 1812.

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## COPY QUERIES AND OPINION OF MR. SCARLETT.

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### QUERIES.

1. Whether any objection can be made to the grant of the soil contained in the charter, and whether the grant will include all the country, the waters of which run into Hudson's Bay, as ascertained by geographical observation.

2. Whether, as proprietors of the soil, the company may exclude all other persons from residing thereon, and dispossess the Canadian traders of the posts already occupied by them and used for the purposes of trade with the native Indians.

3. Though the company may not be entitled to prevent other persons from using the navigation of Hudson's Bay, or of navigable rivers within their territories, are they entitled to prevent all persons from landing upon the shores of the bay of the banks of the rivers; and in those places where the navigation of a river is interrupted by falls, may the company prevent any person from passing over the land for the purpose of transporting himself and his merchandize to any other point where the river may again become navigable.

4. Whether the company, by virtue of their right of property, may prevent the Canadian traders from passing through their territories to arrive at Athabaska or other countries not included in the charter, or will the use which these traders have enjoyed for nearly 40 years of travelling through the company's territories, entitle them to its continuance. You will observe that it is impossible for the Canadian traders to traverse the company's territories without cutting wood for firewood, using the water found in the course of their journey, and pitching their tents upon the company's lands; and on this head you will further please to say whether these are rights which the Canadian traders can acquire by any and what length of possession.

5. Supposing the company entitled to dispossess the Canadian traders and to maintain an exclusive right to trade within the territories, what steps do you advise as the best to be pursued for making this right effectual.

6. Does it appear to you that the civil and criminal jurisdiction granted to the company is valid.

7. If valid, how is it to be exercised. May the company erect courts of justice, or authorize any person to administer the laws of England as they might be administered in England.

8. May the company appoint a sheriff to execute the judgments of their courts, and to do the duty of a sheriff as performed in England.

9. May such sheriff, in case of resistance to his authority, call out the population to his assistance, and may the company put arms in the hands of their servants and those who live under them, as well for their defence against attack, as to assist in enforcing the judgments of their courts.

10. Supposing the company to hold courts of justice, who will be subject to their jurisdiction? Will it be only their own servants and persons residing within their territories by their permission and direct authority, or will these words of the charter, viz., "those that live under them," include the Canadian traders who have



established themselves intrusively on the lands of the company, and who dispute their rights.

11. Supposing these traders to resist the Sheriff in the execution of his warrant, and death should ensue, would the servants of the company or others acting in support of the warrant, be responsible for the consequences, and, in like manner, would the servants of the company be responsible for the consequences of a forcible resistance against an attempt of the Canadian traders to trespass on the company's territory.

12. Supposing that in the course of such resistance or trespass on the part of the Canadian traders, any of them should be guilty of crime or misdemeanor, would the company be justified, in terms of a clause in their charter above cited, in transmitting the party or parties to England, and could the case be there brought to trial so as to subject the offenders to the punishment prescribed by law for the same offence in England.

13. Seeing the territories within which criminal jurisdiction is given by the 43 Geo. III., c. 138, to the courts of Lower and Upper Canada are the Indian territories, or parts of America not within the limits of either the said Provinces," can this Act be stated to give to these courts jurisdiction within the territories of the Hudson's Bay Company.

14. If the company were to erect courts for the punishment of crimes, or if they were to send home offenders to England to be tried, would the criminal jurisdiction given to the Courts of Lower and Upper Canada by the 43 Geo. III., c. 138, (supposing it to extend to their territories) be thereby superseded.

15. There are partners of the North-West Company resident in London who concur in sending persons from Canada into the company's territory for the purpose of trade. Does it appear to you that the company can bring and maintain a special action of damages on the case in England against such partners of the North-West Company resident in London.

16. What would be the effect in such an action, if it could be established that the traders employed by the North-West Company, not content with a fair participation in the trade, are in the practice of maltreating the native Indians, to deter them from dealing with the Hudson's Bay Company, and likewise of using violence and threats to intimidate the servants of the Hudson's Bay Company from prosecuting their trades.

17. Nothing is said in the charter in regard to the amount of the capital of the company or the manner of raising it. But in the year 1700 the original stock of the company subscribed at the date of its charter was trebled out of the profits, by adding the amount of the latter to the former without dividing them. In the year 1720, it was again trebled and a further subscription was opened, but it does not appear that subscriptions were received from any persons excepting proprietors of stock who were allowed to subscribe in proportion to their stock.

It is now proposed to raise a further capital, for which two modes have been suggested :—

*First.* To offer each proprietor who may be inclined to subscribe permission so to do in a given proportion to his existing stock, subject to the condition of his declaring his acceptance of this offer within a limited time, and in case of his failure or refusal to accept such offer, then his share of the new stock to be offered to the other stockholders, and in case of their failure or refusal to accept, them such share of the new stock to be offered to public sale to the highest bidder.

*Secondly.* It has been proposed to make a call on the present stockholders *pro rata* of their stock, with a declaration that if they did not satisfy the call their stock would be forfeited.

You are requested to say whether either mode is within the power given to the company by their charter.

#### OPINION.

1. It appears to me that no other objection can be made to the grant of the soil to the extent stated in the charter, except that His Majesty could not make a valid

grant of territory occupied by any other nation, though not Christian. I apprehend the grant is good of all such part of the territory in question as was really unoccupied, and of which a sort of possession had been taken for His Majesty by the first English Adventurers. I believe that the title of all the owners of lands in the British plantations is desired, this grant similar to the present made either to inhabitants or to a company.

2. As I do not find, from the case, that the company have established any regulations to govern the possession or title of lands within their territories, I know not how otherwise to answer this query than by reference to the law of this country; and I am of opinion that they could not at this time receive any aid from the law of this country to dispossess those whose occupation has continued above 20 years without any disturbance from the company, their acquiescence in so long an adverse possession would afford a sufficient presumption of an actual grant from them of the portions of territory so occupied, together with all the necessary means of occupation and access which have been hitherto enjoyed.

3. Generally speaking, I apprehend the company have by their charter, and their territorial rights under it, a legal authority to restrain persons from the Acts stated in this query. But this authority, I think, must be qualified in particular instances by the sort of usage referred to in the answer to the preceding question.

4 and 5. I am of opinion that the usage of the right of passage for the space of 40 years, with the knowledge of the Company, and without interruption by them, will establish the right for the King's subjects in Canada to use the passage in the same manner and for the same purposes as hitherto. I should here observe that in this opinion I support the question upon this right to arise before some tribunal in England, though I am not aware how this is possible, except by a feigned issue to try it.

6, 7, 8, 9 and 10. It appears to me that the civil and commercial jurisdiction granted to the company is valid, except in such instances where the powers seem to be more extensive than the King could by his prerogative exercise himself, or grant to a subject, some of them will be noticed. And I am rather inclined to think the company have authority, by the terms of their charter, to enact laws not only for the government of their own body, but of such persons as are resident within their jurisdiction, supposing those laws and regulations to be merely local and consistent with the laws of this country. I observe that, by a clause in the charter (page 15 of the copy left herewith) the company have authority to appoint Governors of forts, factories, etc., and other officers, and that the Governors so appointed, and their Council, have each within the limits of his own jurisdiction, which the company of course must assign, power to judge all causes, civil or criminal, according to the law of England. I apprehend, therefore, that the said company have no right to appoint judges *nomine*, for that is incidental to the Sovereign dominion, which the King expressly reserves in the charter, and which I concur he cannot part with by law, yet when they have appointed a Governor of a fort that the charter invests that Governor with a judicial power to administer the law of England; and I think the company may by the charter appoint such officers subordinate to the Governor, as may assert him in the executive part of his administration. The power of the officer corresponding to the Sheriff, would be analogous to the power of that officer in England, and I apprehend that the subjects of the plantation would be bound by the same rules of civil obedience as prevail in England to support the officers of justice in the execution of legal process or judgments. But, though it appears to me that those powers are granted by the charter, and that it was competent to the Crown to grant therein this form; yet, if they have not hitherto been exercised, if this part of the charter has not been acted upon, I should not think it expedient at this time, after the various changes which have taken place in the circumstances of the colony, and in the opinions of men since the time of Charles II., to put these powers into activity without some sanction from the Legislature. The jurisdiction which would have been submitted to at the first will now be resisted, and the whole machinery for the administration of justice must at the present day be so much more complicated and extensive than it would have been thought requisite to make it at the date of the charter or the commencement of the adventure,



that it is likely to encounter more difficulty in its operation, and may possibly fail of its intended effect.

11. The particular case must occur before any answer can be given. There may be circumstances where, those acting under the orders of the Sheriff, in England, might be responsible in case of death. Generally speaking, however, the parties acting in the case supposed in this query strictly within the limits of a lawful authority from the Sheriff, would not be responsible for the death of a person resisting that authority. The present state of trade, as appears from this case, seems likely to give rise to disputes. The Judge, the Sheriff and his *posse comitatus* will in a great measure be the parties to in the cause, and the resisting intruders are likely to give very early occasion for investigating whether the legal authority of the new functionaries and their subjects has been strictly pursued with all due form. The probability of some error, where there has been no previous habit of observing any forms and of a disposition to take advantage of error wherever it can be found, leads me to apprehend that the Sheriff and those acting under his warrant might incur considerable risk in the event supposed.

12. I am of opinion that the company would not be justified in sending the supposed offender to England, and that he could not be then tried by any known law. The clause alluded to in this query seems to me not be justified by the mere prerogative of the King, and I should think it very unsafe to act upon it without the sanction of the Legislature.

13. I am inclined to think that this Act does not give the jurisdiction here supposed.

14. I think not; the company having now no courts, the jurisdiction given by the Legislature, which might be necessary by reason of the Company's omission, cannot be affected by any subsequent exercise of their powers under the charter.

15 and 16. The particular case must be stated before these queries can be answered. The partners of the North-West Company resident here may be answerable in an action upon the case for any infringement of the charter authorized by them individually and which has not power into a right by usage. The maliciously deterring the Indians from having prejudice of the company would be actionable and brought home to the parties in evidence.

17. It appears to me that the first mode above suggested of raising a further capital is quite unexceptionable. The present members of the company may undoubtedly increase the capital by a voluntary subscription amongst themselves, or they may admit any new member who chooses to subscribe. They have, by the charter, a general power of admitting whom they please, agreeably to the orders and regulations made by them at a general court.

They may therefore make an order to admit any person who subscribes a certain sum, a member. The second mode proposed involves a question of the jurisdiction of the company over their own body, I doubt very much whether they could impose the penalty of forfeiture for not subscribing a further sum. There is an express instance of a cause of forfeiture stated in the charter, which is, where a party who has voluntarily subscribed, refuses afterwards to pay; and I therefore doubt whether the company could, by law or order of their own, create a new case of forfeiture. Much, however, may depend upon the actual regulations or by-laws under which the company now are governed, to which no allusion has been made in this case.

(Signed) J. SCARLETT.

TEMPLE, January 22nd, 1813.

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COPY QUERIES AND OPINION OF MR. JUSTICE HOLROYD, SIR SAMUEL ROMILLY, MR. CRUISE, MR. SCARLETT AND MR. BELL.

1. Whether any objection can be made to the grant of the soil contained in the charter, and whether the grant will include all the country the waters of which run



into Hudson's Bay, as ascertained by geographical observations?—We are of opinion that the grant of the soil contained in the charter is good, and that it will include all the country the waters of which run into Hudson's Bay, as ascertained by geographical observation.

2. Whether as proprietors of the soil the company may exclude all other persons from residing thereon, and disposes the Canadian traders of the posts already occupied by them and used for the purposes of trade with the native Indians?—We are of opinion the company may exclude all persons from residing on the lands granted to them, and not already settled there. But we are of opinion they cannot disposes the Canadian traders of the posts already occupied by them where there has been 20 years' quiet possession, and by making use of their grant only for the purposes of exclusion, and not to encourage settlers they may possibly endanger the grant.

3. Though the company may not be entitled to prevent other persons from using the navigation of Hudson's Bay or of navigable rivers within their territories, are they entitled to prevent all persons from landing upon the shores of the bay or the banks of the rivers; and on those places where the navigation of a river is interrupted by falls, may the company prevent any person from passing over the land for the purpose of transporting himself and his merchandize to any other point where the river may again become navigable?—We are of opinion the company are not entitled to prevent other persons from using the navigation of Hudson's Bay and of the navigable rivers within their territories, or to prevent persons from landing upon the shores of the bay or banks of rivers, or from passing over their land where it is desert and uncultivated, and where the King's, whether native Indians or others, have been accustomed to pass for the purpose of transporting themselves and their merchandize where no roads and passage must be subject to the reasonable regulations of the company.

4. Whether the company, by virtue of their right of property, may prevent the Canadian traders from passing through their territories to arrive at Athabaska or other countries not included in the charter; or will the use which these traders have enjoyed for nearly 40 years, of travelling through the company's territories, entitle them to its continuance. You will observe that it is impossible for the Canadian traders to traverse the company's territories without cutting wood for firewood, using the water found in the course of their journey, and pitching their tents upon the company's lands; and, on this head, you will further please to say whether these are rights which the Canadian traders can acquire by any and what length of possession?—It follows from what we have said in answer to the last query that, we think the Canadian traders are entitled to this right of passage, and we think that as incident to it they must have such right of pitching tents, using water and cutting firewood as necessity requires.

5. Supposing the company entitled to dispossess the Canadian traders and to maintain an exclusive right of trade within the territories, what steps do you advise as the best to be pursued for making the right effectual?—We are of opinion the company cannot maintain a right to an exclusive trade.

6. Does it appear to you that the civil and criminal jurisdiction granted to the company is valid?—We are of opinion that the grant to the civil and criminal jurisdiction is valid, but it is not granted to the company, but to the Governor and Council at their respective establishments; but we cannot recommend it to be exercised so as to affect the lives or limbs of criminals.

7. If valid, how is it to be exercised? May the company erect courts of justice, or authorize any person or persons to administer the laws of England as they might be administered in England?—It is to be exercised by the Governor and Council as judges, who are to proceed according to the laws of England.

8. May the company appoint a sheriff to execute the judgments of their court, and to do the duty of a sheriff as performed in England?—The company may appoint a sheriff to execute judgments and to do his duty, as in England.

9. May such sheriff, in case of resistance to his authority, call out the population to his assistance, and may the company put arms into the hands of their servants and

those who live under them, as well for their defence against attack as to assist in enforcing the judgments of their courts?—We are of opinion that the sheriff, in case of resistance to his authority, may call out the population to his assistance, and may put arms into the hands of their servants for defence against attack, and to assist in enforcing the judgments of the court, but such powers cannot be exercised with too much circumspection.

10. Supposing the company to hold courts of justice, who will be subject to their jurisdiction? Will it be only their own servants and persons residing within their territories by their permission and direct authority, or will the words of the charter, viz.: “those who live under them,” include the Canadian traders who have established themselves intrusively on the lands of the company, and who dispute their rights?—We are of opinion that all persons will be subject to the jurisdiction of the courts, who reside or are found within the territories over which they extend, including the Canadian traders.

11. Supposing these traders to resist the sheriff in the execution of his warrant, and death should ensue, would the servants of the Company or others acting in support of the warrant, be responsible for the consequences; and, in like manner, would the servants of the company be responsible for the consequences of a forcible resistance against an attempt of the Canadian traders to trespass on the company's territories?—We think the sheriff and those assisting him, acting in support of a warrant made out by due authority and in proper form, would be equally protected from the consequence of the execution of the warrant with persons executing a similar warrant in England.

We also think the servants of the company may resist with force, not directly tending to loss of life or limb, any illegal attempt of persons to trespass on the company's property, and if an attack is made on a man's house, he may defend it, even to the destruction of life, if he cannot otherwise defend the possession of it. But such powers cannot be executed with too great moderation. Though the general law may be such as is above laid down, it is impossible, in our opinion, to give those directions which are necessary for its safe application in each particular case, independently of the difficulty which may arise from want of evidence or imperfect evidence of what passes in so distant a quarter, and from the circumstances that the company's servants, the judges, sheriff and *posse comitatus*, in disputes with Canadian traders, will be, in some measure, parties interested, and their conduct may therefore be more strictly invested. Nothing should be done to endanger either life or limb, unless in cases of most extreme necessity.

12. Supposing that, in the course of such resistance or trespass on the part of the Canadian traders, any of them should be guilty of crime or misdemeanor, would the company be justified, in terms of a clause in their charter above cited, in transmitting the party or parties to England, and could the case be there brought to trial, so as to subject the offenders to the punishment prescribed by law for the same offence in England?—Parties can only be sent to England for murder. For other offences they must be tried by the courts of the territory.

13. Seeing the territories within which criminal jurisdiction is given by the 43 Geo. III, c. 133, to the Courts of Upper and Lower Canada, are “the Indian Territories, or parts of America, not within the limits of either the said Provinces,” can this Act be stated to give to these courts jurisdiction within the territories of the Hudson's Bay Company?—We do not think this Act gives jurisdiction within the territories of Hudson's Bay Company, the same being within the jurisdiction of their own Governor and Council.

14. If the company were to erect courts for the punishment of crime, or if they were to send home offenders to England to be tried, would the criminal jurisdiction given to the Courts of Lower and Upper Canada by the 43 Geo. III, c. 133 (supposing it to extend to their territories), be thereby superseded?—If the Act gives the Courts of Upper and Lower Canada jurisdiction, that would not be superseded in the manner here suggested.



15. There are partners of the North-West Company resident in London, who concur in sending persons from Canada into the company's territory for the purposes of trade. Does it appear to you that the company can bring and maintain a special action of Damages on the case in England against such persons of the North-Western Company resident in London?—We are of opinion the grant to the company of an exclusive trade is not valid, and we conceive that no action will be against any one moiety for trading, though the trade of the company should thereby be rendered less profitable.

16. What would be the effect in such an action if it could be established that the traders employed by the North-Western Company, not content with a fair participation in the trade, are in the practice of maltreating the native Indians, to deter them from dealing with the Hudson's Bay Company, and likewise of using violence and threats to intimidate the servants of the Hudson's Bay Company from prosecuting their trades? If it could be shewn that any parties made use of improper means to injure the company in their trade, an action on the case might be maintained against those persons, or any by whose directions such acts are done to the injury of the company.

17. Nothing is said in the charter in regard to the amount of the capital of the company or the manner of raising it; but in the year 1700 the original stock of the company, subscribed at the date of its charter, was trebled out of the profits by adding the amount of the latter to the former without dividing them. In the year 1720 it was again trebled and a further subscription was opened, but it does not appear that subscriptions were received from any persons excepting proprietors of stock, who were allowed to subscribe in proportion to their stock.

It is now proposed to raise a further capital, for which purpose two modes have been suggested:—

*First.* To offer each proprietor, who may be inclined to subscribe, permission so to do on a given proportion to his existing stock, subject to the condition of his declaring his acceptance of this offer within a limited time, and in case of his failure or refusal to accept such offer, then his share of the new stock to be offered to the other stockholders, and in case of their failure or refusal to accept, then such share of the new stock to be offered to public sale to the highest bidder.

*Second.* It has been proposed to make a call on the present stockholders *pro rata* of their stock, with a declaration that if they do not satisfy the call their stock will be forfeited.

You are requested to say whether either mode is within the power given to the company by their charter?

The first of these modes seems the most proper mode of proceeding. The charter does not appear to warrant the second mode proposed.

(Signed)	SAMUEL ROMILLY,
"	WILLIAM CRUISE,
"	G. S. HOLROYD,
"	J. SCARLETT,
"	JOHN BELL.

LINCOLNS INN, June 10, 1814.

## COPY QUERIES AND OPINIONS OF DR. STODDART.

### QUERIES.

Whether the Hudson's Bay Company, or their officers or servants, or any of the settlers before mentioned, are entitled to any and what redress against the North-West Company, or any of their servants, or persons acting under their authority, or against any other persons, for any of the numerous acts of robbery, imprisonment and aggression committed on them as stated in the several instances set forth in this



case and in the documents therein referred to; as well in respect of the acts committed within the limits of the Hudson's Bay Company's charter, as those committed in the County of Athabaska and other parts of the Indian territory not within the territory granted to the Hudson's Bay Company?

And whether the Hudson's Bay Company can adopt any and what course of proceedings by which the validity of their charter, and of the rights claimed by them under the same, may be put in a train for judicial decision, either by a petition to the Prince Regent in Council, or a petition to Parliament, or by any or what other proceedings, either before any of the Departments of Government or in any of the Courts of Law or Equity, in order that the disputes which have taken place and still continue between the Hudson's Bay Company and the North-West Company may be discussed, and the rights of the parties satisfactorily ascertained and established by some competent tribunal, and to advise the Hudson's Bay Company generally as to their rights, and the measures it will be most advisable for them to adopt under the particular circumstances before mentioned.

#### OPINION.

1. I am of opinion that all crimes and offences committed either within the limits of the Hudson's Bay charter, or in the County of Athabaska, and other parts of the Indian Territory, may be prosecuted under the Canada Jurisdiction Act (Stat. 43, Geo. III., c. 138), in the Courts of the Province of Lower Canada, or in those of Upper Canada, if so directed by the Governor of the former Province. Crimes and offences committed within the Hudson's Bay Territory, might, I apprehend, be prosecuted before the Governor and Council of Ruperts Land, if such Governor was appointed by the Hudson's Bay Company, and allowed by the Prince Regent, for the jurisdiction which is given to the Governor and Council by the charter, would, I conceive, be perfectly valid, although it appears to me that the Statute of the 43rd of the King gives a concurrent jurisdiction in such cases to the Courts of Canada, with respect to murders and manslaughters, in particular, if committed in any part of the Indian Territory not within His Majesty's dominions, nor subject to any European State, nor within the territory of the United States of America. It seems, that these, if perpetrated by any person that may have sailed in any British vessel, fall under the Revision of Stat. 47, Geo. III., c. 53, and may therefore be tried in any of His Majesty's colonies under the King's commission, issued for such a purpose. Murders committed in any of the places before specified, whether within or without the King's dominions, may be tried in England, according to the provisions of Stat. 33, Henry VIII., c. 23, but other crimes and offences committed in those places could not easily be tried in England. If any partners of the North-West Company or others, could be proved to have conspired in England to bring about crimes or offences in Rupert's Land, the Indian Territory or the Canadas, I apprehend that such conspirators may be proceeded against in this country. On the whole of this part of the case, however, I desire to be understood as speaking with great diffidence, since it does not relate to those branches of the law to which my professional practice is confined.

For civil injuries done out of the limits of the two Canadas, I apprehend the courts of these Provinces can afford no redress, but some of the civil injuries done to the Hudson's Bay Company and their servants appear to have been consummated within those limits, and may consequently become the subject of civil actions there.

From the criminal proceedings of the British Courts of North America, there is no appeal to this country, but in regard to civil actions the case is somewhat different. From the courts of civil jurisdiction in Upper Canada, an appeal lies only where the question is matter of law, as in the case of *Gray vs. Welcoks*, which was carried by writ of error from a decision of the King's Bench of Upper Canada in 1807, to the Governor and Council, and from thence to the King in Council.

In Lower Canada the courts appear to proceed, in most cases, according to the old French laws, upon written evidence, and where that is the case an appeal seems to lie from the judgments, both on matter of law and fact, to the King in Council, as

in the case of *Sheppard vs. Maclure*, which was merely an appeal from the judgment of the Court of King's Bench of Lower Canada in 1812, first to the Governor and Council, and then to the King in Council.

2nd. The validity of the Hudson's Bay charter having been so frequently recognized by the most solemn Acts of State, the objections made against it would seem scarcely deserving of any serious notice if it were not that they are in some degree supported by the opinions of the learned gentlemen who appear to have been consulted by the North-West Company. It is not necessary to the general validity of a charter that every particular clause in it should be valid, and it will hardly be contended that in the Hudson's Bay charter there are not some things granted which it was fully in the power of the Crown to grant. As to nonuser or misuse of a charter these do not annul it *ipso facto*, whatever weight they may have if proved in a proceeding by *scire facias* or *quo warranto*. Therefore, it must be taken that unless some Legislature or Judicial Act has declared the charter void, it stands good in its generality, notwithstanding any specific invalidity as to its provisions. Doubts, for instance, may exist as to the grant of exclusive trade, but these it is not material at present to consider, more especially as it is stated that no attempt has been made to prevent the Canadian traders from resorting to the same places as the servants of the Hudson's Bay. A more important question is that of the territorial limits.

I am clearly of opinion that the grant of lands is not void for uncertainty. A mode of construing it has indeed been suggested in the opinion of the learned gentlemen, before alluded to, from which I must, with all deference to them, beg leave to dissent. They argue that the words "within the strait" imply such a proximity to the straits as would give the lands spoken of a sort of *affinity or relations to Hudson's Straits*; but I think that if these last-quoted words had been actually inserted in the charter they would only have introduced an uncertainty which does not now appear to me to exist, for every river which discharges its waters into the sea, in Hudson's Bay, is a river within the entrance of Hudson's Straits, and all lands from the mouth of such river to its sources are lands which lie upon the river, and the limit of the lands so granted is a precise and definite limit, namely, the height of land from which the river flows, and, as the grant gives all the lands upon all such rivers, it follows that all the lands between all such heights and the bay are within the limits of the charter; and it is not necessary that all those heights should have been specifically known either to the grantor or grantee, for they both knew that such such heights must exist, and that they were capable of ascertainment *et id certum est quod certum reddi potest*. Indeed, this was a mode of fixing the limits of new colonies very frequently adopted by foreign Sovereigns as well as our own, and it is particularly observable in the case of Canada, a province directly bordering on the territory of the Hudson's Bay Company. (See the commission of M. Champlain, Lieutenant-Governor of the French Province of Canada in 1625, the expressions of Davity the Topographist 1643, His Britannic Majesty's Proclamation, 7th October, 1763, Stat. 14, Geo. III, c. 83, etc.) Geographers, it is true, have differed in opinion as to the precise heights from which the waters flowed into Hudson's Bay, but they have uniformly considered some ridge of high lands real or imaginary to be the boundary of the company's territory.

The objection that is founded on the large extent of the grant appears to me to be of little weight. The word lands is coupled with territories and countries, and that the whole were meant to be very comprehensive and reach far inland, appears from the grants of fishing and miners, and from the power to erect and build castles, fortifications, forts, garrisons, colonies or plantations, towns and villages in any parts or places within the limits and bounds granted; as well as from the original objects of the undertaking, viz., to discover a passage into the South Sea and to find some trade for fur, minerals and other considerable commodities, and, lastly, from the high rank of the original grantees, particularly of Prince Rupert, who was Count Palatine of the Rhine, Duke of Bavaria, Cumberland, etc.

Similar grants at various periods of history have embraced very extensive tracts of land. The Caroline charter (1663) granted all the lands from Tucker Island on



the east "to the westward as far as the South Seas." The Legislature distinctly recognized a still larger grant in case of the South Sea Company, who, by Statute 9, Am. c. 21, were made sole owners of all the places they should discover on the east side of America, from the River Oronoko to the southernmost part of the Terra del Fuego, and from that point westward to the northernmost part of America. So the first Massachusetts charter (18 Ja., c. 1) extended throughout all the mainland from "sea to sea," and the objects of these charters, as stated in that of Pennsylvania, were "to enlarge the English empire, and promote such useful commodities as might be of benefit to the King and his dominions, as also to reduce the savage nations by gentle and just manners to the love of civil society and christian religion.

If any authoritative decision could be obtained settling the territorial limits of Rupert's Land on the principles by which it appears to me that they should be regulated, I think the subordinate questions, such as those of jurisdiction etc., would afford comparatively little trouble. I am therefore of opinion that the company should use every exertion to obtain a settlement of those limits by competent authorities, judicial or legislative. The only original jurisdiction for that purpose appears to be in the Prince Regent in Council, I am not aware that the Board of Trade has any such jurisdiction, although it was formerly much in the habit of having similar questions referred to it by the King in Council, or by the Committee of Council, for plantation affairs, and of reporting on them accordingly, which report was usually adopted as a ground of decision by the King in Council. The Court of Chancery has no original jurisdiction of boundaries, but may consider them incidentally where the jurisdiction is otherwise founded, as in the case of *Pen vs. Lord Baltimore* (1 Ves. 444), which was a bill for a specific performance of articles between the plaintiff and defendant to settle the boundaries of two contiguous proprietary Governments. It might perhaps deserve consideration whether the Hudson's Bay Company could offer any sufficient inducement to the individual partners of the North-West Company (including those who are in England) to enter into articles recognizing the boundaries of Rupert's Land, and binding themselves to do or cause to be done by persons under their influence or control, certain acts in recognition of the rights of the Company. Perhaps such articles might not only be enforced in Chancery, but if secured by a penalty might be brought under the consideration of the Courts of Common Law. On the latter point, however, I speak with much hesitation, as I do when I say it appears to me that the action for slander of title, above suggested, could not be successfully maintained.

I am, however, of opinion that the Hudson's Bay Company should present a petition to the Prince Regent in Council, praying for a settlement of boundaries and for such other relief as to the wisdom of His Royal Highness in Council might seem meet. In support of such petition affidavits should be prepared setting forth the injuries already sustained by the company, and also describing the limits which the company consider to be those of the plantation or colony of Rupert's Land, with reference to the unfortunate occurrences which have taken place at the Red River. I think it material to prove that the waters of that river fall into the sea within the entrance of Hudson's Straits, and adverting to the maps which I have seen, I conceive that, for the satisfactory determination of this point, it would be necessary to show that the Saskatchewan River flows into, and the Nelson River out of Lake Winipeg; for the real and only question, as far as I have been able to consider the subject, is whether the heights of land in which the Severn and Hill Rivers have their sources, or that more southerly range in which the Red and Winipeg rise, are the proper boundaries of Rupert's Land. To the company, however, it would be of incalculable advantage to obtain a decision of the Prince Regent in Council recognizing either; but more especially the latter, and in case a doubt should remain, after considering the evidence, it might be advisable to petition the Council to appoint Commissioners to make a survey and report, in consequence of which a dividing line might be run between Rupert's Land and the adjoining territories; such was the course adopted in the cause of Lord Fairfax against the Governor and Council of Lord Virginia before the King in Council, 1745, when the Committee of Council for plantation affairs, after



hearing counsel for several days, reported in favor of a survey made by certain Commissioners who had been named some years before by an Order in Council on his Lordship's petition.

It might be made part of the company's prayer that, during the pendency of proceedings, instructions should be issued to His Majesty's Governor of Upper and Lower Canada to afford protection to the servants, grantees, etc., under the Hudson's Bay Company against any forcible dispossession or other violence. A petition to this effect was presented to the King in Council in 1743 by the Governor and Council of Rhode Island in their dispute respecting boundaries with Massachusetts's Bay. I am not aware that the hearing or determining on a petition to the Prince Regent in Council is a matter that can be demanded as to right by the Hudson's Bay Company, but I rather conceive that these are matters of grace and favor, the granting or withholding which are in the discretion of His Royal Highness as he may be advised by his Council. I apprehend, however, that if a strong case be made out and in evidence tendered thereon to the Council, without obtaining any hearing or decision from the High Tribunal, within a reasonable time, it will then be proper on the part of the Hudson's Bay Company to implore the interference of the Legislature.

(Signed)

J. STODDART.

DOCTORS' COMMONS, 29th November, 1819.

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#### LAKE SUPERIOR TREATY, 1850.

This agreement made and entered into on the seventh day of September, in the year of our Lord, 1850, at Sault Sainte Marie, in the Province of Canada, between the Honorable William Benjamin Robinson, of the one part, on behalf of Her Majesty the Queen, and Joseph Peaudechat, John Ininway, Mishemuckqua, Totomenai, Chiefs, and Jacob Wasseba, Ahmutchwagabon, Michel Shebageshick, Manitoshainse and Chigenaus, principal men of the Ogibbeway Indians inhabiting the northern shore of Lake Superior, in the said Province of Canada, from Batehewanaung Bay to Pigeon River, at the western extremity of said lake, *and inland throughout that extent to the height of land which separates the territory covered by the Charter of the Honorable the Hudson's Bay Company from the said tract*, and also, the islands in the said lake within the boundaries of the British possessions therein, of the other part;

Witnesseth, that for and in consideration of the sum of £2,000 of good and lawful money of Upper Canada, to them in hand paid, and for the further perpetual annuity of £500, the same to be paid and delivered to the said chiefs and their tribes at a convenient season of each summer, not later than the first day of August, at the Honorable the Hudson's Bay Company posts of Michipicoten and Fort William, they, the said Chiefs and principal men, do freely, fully and voluntarily surrender, cede, grant and convey unto Her Majesty, her heirs and successors, for ever, all their right, title and interest in the whole of the territory above described, save and except the reservations set forth in the schedule hereunto annexed, which reservation shall be held and occupied by the said Chiefs and their tribes in common for the purposes of residence and cultivation. And should the said Chiefs and their respective tribes at any time desire to dispose of any mineral or other valuable productions upon the said reservations, the same will be, at their request, sold by order of the Superintendent-General of the Indian Department for the time being, for their sole use and benefit and to the best advantage.

And the said William Benjamin Robinson, of the first part, on behalf of Her Majesty and the Government of this Province, hereby promises and agrees to make the payments as before mentioned, and further, to allow the said Chiefs and their tribes the full and free privileges to hunt over the territory now ceded by them, and to fish in the waters thereof, as they have heretofore been in the habit of doing

saving and excepting only such portions of the said territory as may from time to time be sold or leased to individuals, or companies of individuals, and occupied by them with the consent of the Provincial Government.

The parties of the second part further promise and agree that they will not sell, lease, or otherwise dispose of any portion of their reservations without the consent of the Superintendent-General of Indian affairs being first had and obtained; nor will they at any time hinder or prevent persons from exploring or searching for minerals and other valuable productions in any part of the territory hereby ceded to Her Majesty, as before mentioned. The parties of the second part also agree, that in case the Government of this Province should, before the date of this agreement, have sold or bargained to sell any mining locations or other property, on the portions of the territory hereby reserved for their use and benefit, then, and in that case, such sale or promise of sale shall be perfected, if the parties interested desire it, by the Government, and the amount accruing therefrom shall be paid to the tribe to whom the reservation belongs.

The said William Benjamin Robinson, on behalf of Her Majesty, who desires to deal liberally and justly with all Her subjects, further promises and agrees that in case the territory hereby ceded by the parties of the second part shall at any future period produce an amount which will enable the Government of this Province, without incurring loss, to increase the annuity hereby secured to them, then, and in that case, the same shall be augmented from time to time; provided that the amount paid to each individual shall not exceed the sum of one pound, Provincial currency, in any one year, or such further sum as Her Majesty may be graciously pleased to order; and provided that the number of Indians entitled to the benefit of this Treaty, shall amount to two-thirds of their present number (which is 1,240) to entitle them to claim the full benefit thereof; and should the numbers at any future period not amount to two-thirds of 1,240, the annuity shall be diminished in proportion to their actual numbers.

*Schedules of Reservations made by the above-named and subscribing Chiefs and Principle Men.*

*First.*—Joseph Peaudechat and his tribe; the reserve to commence about two miles from Fort William (inland), on the right bank of the River Kaministiquia; thence westerly six miles parallel to the shores of the lake; thence northerly five miles; thence easterly to the right bank of the said river, so as not to interfere with any acquired rights of the Honorable the Hudson's Bay Company.

*Second.*—Four miles square at Gros Cap, being a valley near the Honorable the Hudson's Bay Company's Post of Michipicoten, for Totomeanai and tribe,

*Third.*—Four miles square on Gull River, near lake Nipigon, on both sides of said river, for the Chief Mishemuckqua and tribe.

Signed, sealed and delivered at Sault  
Sainte Marie, the day and year first  
above written, in presence of—

GEO. IRONSIDE, S. I. Affairs,  
ARTHUR P. COOPER, Cap. Com. Rifle Brigade,  
H. N. BALFOUR, 2nd Lieut., Rifle Brigade,  
JOHN SWANSTON, C. F. Honble. Hudson's Bay Co.,  
GEO. JOHNSTON, Interpreter,  
J. W. KEATING.

W. B. ROBINSON,  
JOSEPH PEAUDECHAT,  
JOHN ININWAY,  
MISHEMUCKQUA,  
TOTOMENAI,  
JACOB WASSABA,  
AH. MUTCHWAGABON,  
MICHEL SHEBAGESHICK,  
MANITON SHAINSE,  
CHIGENAU.

OPINION OF SIR RICHARD BETHELL, A.G., AND SIR HENRY S.  
KEATING, S. G., 1857.

LINCOLN'S INN, July, 1857.

SIR,—We are favoured with Mr. Merivale's letter of the 9th of June ultimo, in which he stated that he was directed by you to transmit to us copies of two despatches from the Governor of Canada, inclosing the copy of a Minute of his Executive Council, and extract from another Minute of the same in reference to the questions respecting the affairs of the Hudson's Bay Company, then under investigation by a Committee of the House of Commons.

We were also requested to observe from the former of these Minutes that the Executive Council suggest, on the part of Canada, a territorial claim over a considerable extent of country, which is also claimed by the Hudson's Bay Company, as owners of the soil, and with rights of government and exclusive trade under their Charter.

We were also requested to observe by the annexed parliamentary papers of the 12th of July, 1850, that the statement of the Hudson's Bay Company's rights as to territory, trade, taxation, and government, made by them to Earl Grey, as Secretary of the Colonies, on the 13th September, 1849, was submitted to the then law officers of the Crown, who reported that they were of opinion that the rights so claimed by the Company properly belonged to them, but suggested, at the same time, a mode of testing those claims by petition to Her Majesty, which might be referred to the Judicial Committee.

Mr. Merivale was further to annex a Parliamentary Return made in 1842, containing the Charter of the Company, and documents relating thereto; and another of 23rd of April, 1849, containing among other papers, an Act of 2nd William and Mary, "for confirming to the Governor and Company trading to Hudson's Bay their privileges and trade."

The rights so claimed by the company have been repeatedly questioned since 1850 by private persons in correspondence with the Secretary of State, and were then questioned to a certain extent, as appears by those despatches, by the present Local Government of Canada.

Mr. Merivale was also to request that we should take those papers into our consideration, and report,—

Whether we thought the Crown could lawfully and constitutionally raise for legal decision, all or either of the following questions :—

The validity at the present day of the charter itself.

The validity of the several claims of territorial right of government, exclusive trade and taxation insisted on by the company.

The geographical extent of this territorial claim (supposing it to be well founded on any extent).

And if we were of opinion that the Crown could do so, we were requested further to state the proper steps to be taken, in our opinion, by the Crown, and the proper tribunal to be resorted to; and whether the Crown should act on behalf of the Local Government of Canada, as exercising a delegated share of the Royal authority, or in any other way.

And, lastly, if we should be of opinion that the Crown could not properly so act, whether we saw any objections to the questions being raised by the Local Government of Canada, acting independently of the Crown, or whether they could be raised by some private party in the manner suggested by the law advisers in 1850, the Crown undertaking to bear the expense of the proceedings.

In obedience to your request, we have taken the papers into our consideration, and have the honor to report, —

That the questions of the validity and construction of the Hudson's Bay Company's charter cannot be considered apart from the enjoyment that has been had under it during nearly two centuries, and the recognition made of the rights of the company in various Acts, both of the Government and the Legislature.



Nothing could be more unjust, or more opposed to the spirit of our law, than to try this charter as a thing of yesterday, upon principles which might be deemed applicable to it if it had been granted within the last ten or twenty years.

These observations, however, must be considered as limited in their application to the territorial rights of the company under the charter, and to the necessary incidents or consequences of that territorial ownership. They do not extend to the monopoly of trade (save as territorial ownership justifies the execution of intruders) or to the right of an exclusive administration of justice.

But we do not understand the Hudson's Bay Company as claiming anything beyond the territorial ownership of the country they are in possession of, and the right, as an incident to such ownership, of excluding persons who would compete with them in the fur trade carried on with the Indians resorting to their districts.

With these preliminary remarks we beg leave to state, in answer to the questions submitted to us, that in our opinion the Crown could not now, with justice, raise the question of the general validity of the Charter; but that on every legal principle the Company's territorial ownership of the lands, and the rights necessarily incidental thereto (as, for example, the right of excluding from their territory persons acting in violation of their regulations), ought to be deemed to be valid.

But with respect to any rights of government, taxation, exclusive administration of justice, or exclusive trade, otherwise than as a consequence of the right of ownership of the land, such rights could not be legally insisted on by the Hudson's Bay Company as having been legally granted to them by the Crown.

This remark, however, requires some explanation.

The Company has, under the Charter, power to make ordinances (which would be in the nature of by-laws) for the government of the persons employed by them, and also power to exercise jurisdiction in all matters, civil and criminal; but no ordinance would be valid that was contrary to the Common Law, nor could the Company insist on its right to administer justice as against the Crown's prerogative right to establish courts of civil and criminal justice within the territory.

We do not think, therefore, that the Charter should be treated as invalid because it professes to confer these powers upon the Company; for to a certain extent they may be lawfully used, and for an abuse of them the Company would be amenable to law.

The remaining subject for consideration is the question of the geographical extent of the territory granted by the Charter, and whether its boundaries can in any and what manner be ascertained. In the case of grants of considerable age, such as this Charter, when the words, as is often the case, are indefinite or ambiguous, the rule is, that they are construed by usage and enjoyment, including in these latter terms the assertion of ownership by the Company on important public occasions, such as the Treaties of Ryswick and Utrecht, and again in 1750.

To these elements of consideration upon this question must be added the enquiry (as suggested by the following words of the Charter, viz: "not possessed by the subjects of any other Christian prince or state") whether, at the time of the Charter, any part of the territory now claimed by the Hudson's Bay Company could have been rightfully claimed by the French as falling within the boundaries of Canada or Nouvelle France, and also the effect of the Acts of Parliament passed in 1774 and 1791.

Under these circumstances, we cannot but feel that the important question of the boundaries of the Hudson's Bay Company might with great utility, as between the Company and Canada, be made the subject of a quasi-judicial enquiry.

But this cannot be done except by the consent of both parties, namely, Canada and the Hudson's Bay Company; nor would the decision of a Committee of the Privy Council have any effect as a binding judicial determination.

But if the Hudson's Bay Company agree to the proposal of the Chief Justice of Canada, that the question of the boundaries should be referred to the Privy Council, it being further understood by both parties that the determination of the Council shall be carried into effect by a declaratory Act of Parliament, we think the proceed-

ing would be the best mode of determining that which is, or ought to be, the only real subject of controversy.

The form of procedure might be a petition to the Queen by Chief Justice Draper, describing himself as acting under the direction of the Executive Council of Canada, unless, which would be the more solemn mode, an Address were presented to Her Majesty by the Canadian Parliament.

Counsel would be heard on behalf of Canada and of the Company.

We are, &c.,

RICHARD BETHELL.  
HENRY S. KEATING.

The Right Honorable

H. LABOUCHERE, M. P., &c.

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#### AN ACT FOR REGULATING THE FUR TRADE, AND ESTABLISHING A CRIMINAL AND CIVIL JURISDICTION WITHIN CERTAIN PARTS OF NORTH AMERICA.

Whereas the competition in the fur trade between the Governor and Company of Adventurers of England trading to Hudson's Bay, and certain associations of persons trading under the name of "The North-West Company of Montreal," has been found for some years past to be productive of great inconvenience and loss, not only to the said company and associations, but to the said trade in general, and also of great injury to the native Indians, and of other persons subjects of His Majesty: And whereas the animosities and feuds arising from such competition, have also for some years past kept the interior of America, to the northward and westward of the Provinces of Upper and Lower Canada, and of the territories of the United States of America, in a state of continued disturbance: And whereas many breaches of the peace and violence extending to the loss of lives, and considerable destruction of property, have continually occurred therein: And whereas for remedy of such evils, it is expedient and necessary that some more effectual regulations should be established for the apprehending, securing and bringing to justice all persons committing such offences, and that His Majesty should be empowered to regulate the said trade: And whereas doubts have been entertained whether the provisions of an Act passed in the forty-third year of the Reign of His late Majesty King George the Third, intituled "An Act for extending the Jurisdiction of the Courts of Justice in the Provinces of Lower and Upper Canada, to the trial and punishment of persons guilty of crimes and offences within certain parts of North America adjoining to the said Provinces," extended to the territories granted by charter to the said Governor and Company; and it is expedient that such doubts should be removed, and that the said Act should be further extended: Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords, Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act, it shall be lawful for His Majesty, his heirs or successors, to make Grants or give His Royal License, under the hand and seal of one of His Majesty's Principal Secretaries of State, to any body corporate, or company, or person or persons, of or for the exclusive privilege of trading with the Indians in all such parts of North America as shall be specified in any such Grants or Licenses respectively, not being part of the lands or territories heretofore granted to the said Governor and Company of Adventurers of England trading to Hudson's Bay, and not being part of any of His Majesty's Provinces in North America, or of any lands or territories belonging to the United States of America; and all such Grants and Licenses shall be good, valid and effectual for the purpose of securing to all such bodies corporate or companies, or persons, the sole and exclusive privilege of trading with the Indians in all such parts of North America (except as hereinafter excepted,) as shall be specified in such Grants or Licenses; anything contained in any Act or Acts of Parliament, or any law to the contrary notwithstanding.



II. Provided always, and be it further enacted, that no such Grant or License, made or given by His Majesty, his heirs or successors, of any such exclusive privileges of trading with the Indians in such parts of North America as aforesaid, shall be made or given for any longer period than twenty-one years; and no rent shall be required or demanded for or in respect of any such Grant or License, or any privileges given thereby under the provisions of this Act, for the first period of twenty-one years; and from and after the expiration of such first period of twenty-one years, it shall be lawful for His Majesty, his heirs or successors, to reserve such rents in any future Grants or Licenses to be made to the same or any other parties, as shall be deemed just and reasonable, with security for the payment thereof; and such rents shall be deemed part of the land revenues of His Majesty, his heirs and successors, and be applied and accounted for as the other land revenues of His Majesty, his heirs or successors, shall, at the time of payment of any such rent being made, be applied and accounted for.

III. And be it further enacted, that from and after the passing of this Act, the Governor and Company of Adventurers trading to Hudson's Bay, and every body corporate, and company, and person to whom every such Grant or License shall be made or given as aforesaid, shall respectively keep accurate registers of all persons in their employ in any parts of North America, and shall, once in each year, return to His Majesty's Secretaries of State, accurate duplicates of such registers, and shall also enter into such security as shall be required by His Majesty for the due execution of all processes, criminal and civil, as well within the territories included in any such grant as within those granted by charter to the Governor and Company of Adventurers trading to Hudson's Bay, and for the producing or delivering into safe custody, for purpose of trial, of all persons in their employ, or acting under their authority, who shall be charged with any criminal offence, and also for the due and faithful observance of all such rules, regulations, and stipulations as shall be contained in any such Grant or License, either for diminishing or preventing the sale or distribution of spirituous liquors to the Indians, or for promoting their moral and religious improvement, or for any other object which His Majesty may deem necessary for the remedy or preventions of the other evils which have hitherto been found to exist.

IV. And whereas by a convention entered into between His Majesty and the United States of America, it was stipulated and agreed, that any country on the north-west coast of America, to the westward of the Stony Mountains, should be free and open to the citizens and subjects of the two Powers, for the term of ten years from the date of the signature of that convention; be it therefore enacted, that nothing in this Act contained shall be deemed or construed to authorize any body corporate, company, or person, to whom His Majesty may have, under the provisions of this Act, made a Grant or given a License of exclusive trade with the Indians in such parts of North America as aforesaid, to claim or exercise any such exclusive trade within the limits specified in the said article, to the prejudice or exclusion of any citizens of the said United States of America, who may be engaged in the said trade: Provided always, that no British subject shall trade with the Indians within such limits, without such Grant or License as is by this Act required.

V. And be it declared and enacted, that the said Act passed in the forty-third year of the reign of His late Majesty, intituled "An Act for extending the jurisdiction of the Courts of Justices in the Provinces of Lower and Upper Canada, to the Trial and Punishment of persons guilty of crimes and offences within certain parts in North America, adjoining to the said Provinces," and all the clauses and provisions therein contained, shall be deemed and construed, and it is and are hereby respectively declared, to extend to and over and to be in full force in and through all the territories heretofore granted to the Company of Adventurers of England trading to Hudson's Bay; anything in any Act or Acts of Parliament, or this Act, or in any grant or Charter to the company, to the contrary notwithstanding.

VI. And be it further enacted, that from and after the passing of this Act, the Courts of judicature now existing, or which may be hereafter established in the



Province of Upper Canada, shall have the same civil jurisdiction, power and authority as well in the cognizance of suits as in the issuing process, mense, and final, and in all other respects whatsoever, within the said Indian Territories and other parts of America not within the limits of either of the Provinces of Lower or Upper Canada, or of any civil government of the United States, as the said Courts have or are invested with within the limits of the said Provinces of Lower and Upper Canada respectively; and that all and every contract, agreement, debt, liability and demand whatsoever, made, entered into, incurred or arising within the said Indian Territories and other parts of America, and all and every wrong and injury to the person or to the property, real or personal, committed or done within the same, shall be and be deemed to be of the same nature, and be cognizable by the same Courts, Magistrates, or Justices of the Peace, and be tried in the same manner and subject to the same consequences in all respects as if the same had been made, entered into, incurred, arisen, committed or done within the said Province of Upper Canada, anything in any Act or Acts of Parliament, or Grant, or Charter, to the contrary notwithstanding: Provided always, that all such suits and actions relating to lands or to any claims in respect to lands not being within the Province of Upper Canada, shall be decided according to the laws of that part of the United Kingdom called England, and shall not be subject to or affected by any local Acts, Statutes, or Laws of the Legislature of Upper Canada.

VII. And be it further enacted, that all process, writs, orders, judgments, decrees, and acts whatsoever, to be issued, made, delivered, given and done by or under the authority of the said Courts, or either of them, shall have the same force, authority, and effect within the said Indian territory and other parts of America as aforesaid, as the same now have within the said Province of Upper Canada.

VIII. And be it further enacted, that it shall be lawful for the Governor or Lieutenant-Governor or person administering the Government, for the time being, of Lower Canada, by Commission under his Hand and Seal, to authorize all persons who shall be appointed Justices of the Peace under the provisions of this Act, within the said Indian territories, or other parts of America as aforesaid, or any other person who shall be specially named in any such commission, to act as a Commissioner within the same, for the purpose of executing, enforcing and carrying into effect all such process, writs, orders, judgments, decrees and Acts which shall be issued, made, delivered, given or done by the said Courts of judicature, and which may require to be enforced and executed within the said Indian territories, or such other parts of North America as aforesaid; and in case any person or persons whatsoever, residing or being within the said Indian territories, or such other parts of America as aforesaid, shall refuse to obey or perform any such process, writ, order, judgment, decree, or Act of the said Courts, or shall resist or oppose the execution thereof, it shall and may be lawful for the said Justices of the Peace or Commissioners, and they or any of them are, and is hereby required, on the same being proved before him, by oath or affidavit of one credible witness, to commit the said person or persons so offending as aforesaid, to custody, in order to his or their being conveyed to Upper Canada; and that it shall be lawful for any such Justice of the Peace or Commissioner, or any person or persons acting under his authority, to convey or cause to be conveyed such person or persons so offending as aforesaid, to Upper Canada, in pursuance of such process, writ, order, decree, judgment or act, and such person or persons shall be committed to gaol by the said Court, on his, her, or their being so brought into the said Province of Upper Canada, by which such process, writ, order, decree, judgment or Act was issued, made, delivered, given or done, until a final judgment or decree shall have been pronounced in such suit, and shall have been duly performed, and all costs paid, in case such person or persons shall be a party or parties in such suit, or until the trial of such suit shall have been concluded, in case such person or persons shall be a witness or witnesses therein: Provided always, that if any person or persons so apprehended as aforesaid, shall enter into a bond recognizance to any such Justice of the Peace or Commissioner, with two sufficient sureties, to the satisfaction of such Justice of the Peace or Commissioner, or the said Courts, conditioned to obey

and perform such process, writ, order, judgment, decree, or Act as aforesaid, then, and in such case, it shall and may be lawful for the said Justice of the Peace or Commissioner, or the said Courts, to discharge such person or persons out of custody.

IX. And be it further enacted, that in case such person or persons shall not perform and fulfil the condition or conditions of such recognizance, then, and in such case it shall and may be lawful for any such Justice or Commissioner, and he is hereby required to assign such recognizance to the plaintiff or plaintiffs, in any suit in which such process, writ, order, decree, judgment, or act shall have been issued, made, delivered, given, or done, who may maintain an action in the said Courts, in his own name, against the said sureties, and recover against such sureties the full amount of such loss or damage as such plaintiff shall prove to have been sustained by him, by reason of the original cause of action in respect of which such process, writ, order, decree, judgment, or act of the said Courts were issued, made, delivered, given or done as aforesaid, notwithstanding anything contained in any Charter granted to the said Governor and Company of Adventurers of England trading to Hudson's Bay.

X. And be it further enacted, that it shall be lawful for His Majesty, if he shall deem it convenient so to do, to issue a Commission or Commissions to any person or persons to be and act as Justices of the Peace, within such parts of America as aforesaid, as well within any territories heretofore granted to the Company of Adventurers of England trading to Hudson's Bay, as within the Indian territories of such other parts of America as aforesaid, and it shall be lawful for the Court in the Province of Upper Canada, in any case in which it shall appear expedient, to have any evidence taken by Commission, or any facts or issue, or any cause or suit ascertained, to issue a Commission to any three or more of such Justices to take such evidence, and return the same, or try such issue, and for that purpose to hold Courts, and to issue subpoenas or other processes to compel attendance of plaintiffs, defendants, jurors, witnesses, and all other persons requisite and essential to the execution of the several purposes for which such Commission or Commissions had issued, and with the like power and authority as are vested in the Courts of the said Province of Upper Canada; and any order, verdict, judgment, or decree, that shall be made, found, declared, or published by or before any Court or Courts held under and by virtue of such Commission or Commissions, shall be considered to be of as full effect, and enforced in like manner, as if the same had been made, found, declared, or published within the jurisdiction of the Court of the said Province, and at the time of issuing such Commission or Commissions shall be declared the place or places where such Commission is to be opened, and the Courts and proceedings thereunder held; and it shall be at the same time provided how and by what means the expenses of such Commission, and the execution thereof, shall be raised and provided for.

XI. And be it further enacted, that it shall be lawful for His Majesty, notwithstanding anything contained in this Act, or in any Charter granted to the said Governor and Company of Adventurers of England trading to Hudson's Bay, from time to time by any Commission under the Great Seal, to authorize and empower any such persons so appointed Justices of the Peace as aforesaid, to sit and hold Courts of Records for the trial of criminal offences and misdemeanors, and also for civil causes; and it shall be lawful for His Majesty to order, direct and authorize the appointment of proper officers to act in aid of such Courts and Justices within the jurisdiction assigned to such Courts and Justices in any such Commission; anything in this Act or in any Charter of the Governor and Company of the Merchant Adventurers of England trading to Hudson's Bay, to the contrary notwithstanding.

XII. Provided always, and be it further enacted, that such Courts shall be constituted, as to the number of Justices to preside therein, and as to such places within the said territories of the said Company, or any Indian territories or other parts of North America as aforesaid, and the times and manner of holding the same, as His Majesty shall from time to time order and direct; but shall not try any offender upon any charge or indictment for any felony made the subject of capital punishment, or for any offence or passing sentence affecting the life of any offender, or adjudge or cause any offender to suffer capital punishment or transportation, or take



cognizance or try any civil action or suit, in which the cause of such suit or action shall exceed in value the amount or sum of two hundred pounds; and in every case of any offence subjecting the person committing the same to capital punishment or transportation, the Court or any Judge of any such Court, or any Justice or Justices of the Peace, before whom any such offender shall be brought, shall commit such offender to safe custody, and cause such offender to be sent in such custody for trial in the Court of the Province of Upper Canada.

XIII. And be it further enacted, that all judgments given in any civil suit shall be subject to appeal to His Majesty in Council, in like manner as in other cases in His Majesty's Province of Upper Canada, and also in any case in which the right or title to any land shall be in question.

XIV. And be it further enacted, that nothing in this Act contained shall be taken or construed to affect any right, privilege, authority or jurisdiction, which the Governor and Company of Adventurers trading to Hudson's Bay are by law entitled to claim and exercise under their Charter, but that all such rights, privileges, authorities and jurisdictions shall remain in as full force, virtue and effect, as if this Act had never been made; anything in this Act to the contrary notwithstanding.

THURSDAY, 18th March, 1880.

Committee met at 11:30 o'clock a.m., Mr. Dawson in the chair.

Hon. Mr. Justice JOHNSON was examined as follows :—

*By the Chairman :*

298. You were at one time Governor of Assiniboia, I understand?—Yes; from 1855 to the end of 1858.

299. You were also Chief Justice of Rupert's Land?—Not Chief Justice; Recorder was the title of the office.

300. That was under the old system?—Yes. The old laws were enforced until altered, and the office of Recorder was continued until the Chief Justice was appointed, Mr. Morris.

301. You were appointed to Manitoba by the Dominion Government?—I was appointed Lieutenant-Governor of Manitoba, but never entered on the duties of the office and never was sworn in, because it was found that, by the laws of Lower Canada, my holding the office of Judge of the Superior Court prevented my holding any other, so I resigned the Lieutenant-Governorship.

302. With respect to the matter of the northern and western boundaries of Ontario having regard to the Quebec Act of 1774, with which, of course, you are familiar would you favor the Committee with your opinion as to what would be the true northern and western boundaries of the old Province of Quebec, as constituted by that Act?—Yes. The northern and western boundaries.—

*By Mr. Weldon.*—The question is whether this is proper evidence to be brought before the Committee. Any information that can be furnished ought to be received, but we must form our own opinions thereon, and not be guided by the opinions of witnesses.

*By the Chairman.*—The order of reference is to enquire into all matters connected with the boundaries of Ontario. Judge Johnson has been Governor of the territory covering the disputed grounds, and has had a great deal to do with the question.

*By Mr. Weldon.*—Facts, information and documents would be proper evidence, but we must form our opinion from the facts presented and the documents submitted.

*By Mr. Robinson.*—The witness will, no doubt, state on what grounds his opinion is formed.

*By Mr. Royal.*—I believe that indiscriminate opinions by every man on this subject should not be taken as evidence; but the opinions of certain men as to the correct



meaning of certain Statutes are, I believe, very important, from their experience, learning and position. I believe what is called jurisprudence in our courts is nothing but the opinion of judges. It might be very proper to have the opinions of men of standing, such as the Hon. Justice Johnson, especially considering that he has long resided in the Red River country and been long connected with the administration of justice there. With all due deference to the opinions of other members of the Committee, I believe we ought to have an expression of the opinion of the witness.

*By Mr. Ouimet.*—I think the technical objection of Mr. Weldon has some force, but the question might be put to the witness in a different way, so as to make it a proper question. The Statutes which we shall have to consult, and from which we will have to form our opinions, are well-known Statutes. They were passed a long while ago. It might be, and I think it is, of very great interest and importance to this Committee to know how these Statutes have been interpreted, and more especially how they have been interpreted by those who have administered justice in the North-West, and who, consequently, have been in the habit of looking at these Statutes, and have seen for themselves *sur les lieux* how they ought to be interpreted. I think, in this respect, Judge Johnson's opinion would be of very great weight, and that it is very important to have it; although the form in which the Chairman has put the question might be objectionable in a strictly technical sense.

*By the Chairman.*—Probably the Judge will inform us as to the way in which the Statute has hitherto been interpreted, and the way in which it has been interpreted more especially as affecting the western and northern boundaries of the old Province of Quebec.

*By Mr. Weldon.*—If we lay down the principle that some opinions ought to be given, I do not see exactly where we ought to draw the line.

*By the Chairman.*—What we want is information as to the way in which the matter was regarded at a period not very remote, and this information we wish to elicit from the Judge. These questions were very much discussed at the time he was Governor, and at the time troops were being sent to the North-West. If he could give us information as to the opinions of counsel and as to the views held in respect to the northern and western boundaries as constituted by the Quebec Act, would not that be within the scope of the order of reference?—I can give you evidence of the authoritative recognition of the District of Assiniboia by the Crown of England. I have always understood that the original Province of Quebec, as constituted by the Act of 1774, was bounded to the north by the southern boundary of the territory granted to the Hudson's Bay Company, and I have always understood that that southern boundary was the height of land separating the basin of Hudson's Bay from the chain of great lakes and the St. Lawrence, and constituting a water-shed on one side and on the other. I have always understood that to be the case. I have further understood that when the Constitutional Act came to be passed in 1791, and the Provinces divided, it was judicially held in the *deReinhardt* case by Chief Justice Sewell, that although that Act divided the Provinces, it did nothing to extend either of them. I think that is self-evident.

303. Was the Colony of Assiniboia recognized by the Imperial Government and in what way?—The existence *de facto* of the Colony of Assiniboia was certainly recognized in a variety of ways, and in the most authoritative manner by the Crown of England in a series of Acts that admit of no doubt whatever. They sent the 6th Regiment there in 1846 or 1847, under Colonel Crofton. They were sent by orders of the Duke of Wellington to occupy that place, so that in view of any trouble in respect to the Oregon question, they might be made available on the other side of the mountains. However that was, they were sent there. After that, when I was sworn in as Governor in 1855, after the retirement of Colonel Crofton and the troops, I made a demand for troops for the purpose of keeping order, and I got troops commanded by Major Seaton. They sent out a company of 100 men of the Canadian Rifles, British troops in the pay of the British Government, and they were quartered there some years.

*By Mr. Ouimet :*

304. You were sent there in 1855 as Governor of Assiniboia?—Yes. Besides the troops, the Crown of England sent out a number of pensioners whom they re-enrolled in permanent form, to whom the Hudson's Bay Company agreed to give land on their becoming settlers there. That was done on the retirement of the 6th Regiment, about the year 1850 or 1851, and those pensioners were there with their families, while I was there as Governor. Some of them and their descendants are still there. But I found a more important recognition accidentally yesterday evening on the part of the English Crown, of the fact that the Colony of Assiniboia was a colony, the existence of which they not only knew of but with respect to which they reserved to themselves the right to establish, of their prerogative, Courts of Justice whenever they should see fit.

305. You mean the Imperial Government?—Yes. The way I came across that was in referring to some old notes which I kept when I was in Assiniboia in 1857 or 1858. In turning them over I found the opinions given by the Attorney and Solicitor-Generals of England of that day, Sir Richard Bethel and Sir Henry Leaking. I found that I had extracted from a newspaper the opinions which those gentlemen were supposed to have given. I also found that I had made this note: "There is an all-important paragraph omitted," and I find the paragraph is inserted in my handwriting. Then to verify it I looked at the opinion as it is published by authority in this country, and contained in the book entitled "Statutes, documents and papers bearing on the discussion respecting the northern and western boundaries of the Province of Ontario, compiled by direction of the Government of Ontario." I found that the paragraph which was omitted in publication, probably for some party purpose, at that time, was this: [to be found on page 200 of the book referred to] "The company has, under the charter, power to make ordinances (which would be in the nature of by-laws) for the government of the persons employed by them, and also power to exercise jurisdiction in all matters civil and criminal; but no ordinance would be valid that was contrary to the common law, nor could the company insist on its right to administer justice as against the Crown's prerogative right to establish Courts of Civil and Criminal Justice within the territory." Here then, in 1857, you have the two law officers of the Crown in England, stating it was the Crown's prerogative right, at that time, if they should see fit, to establish Courts of Civil and Criminal Justice in Assiniboia. Now, that is a declaration entirely at variance with the possibility of its being part of Upper Canada, because to Upper Canada had been granted legislative powers and a constitution of its own, and in its legislature had been vested the right to constitute Courts of Justice. That was a decisive recognition of the fact by the law officers in England that that colony *de facto* existed, that the Crown recognized it, and not only had the power but possibly at that time contemplated the exercise of the power of making it a Crown colony, and establishing Courts of Justice there irrespective of Upper Canada, to which it was not considered to belong at all.

306. It was considered that the water-shed formed the northern boundary line of Upper Canada?—Undoubtedly, and it was considered that the western boundary was the line running due north, as it was laid down in the deReinhardt case, from the confluence of the Mississippi and Ohio to the southern boundary of the Hudson Bay Company's territory.

*By Mr. Trow :*

307. Is the word due north used?—No; the word northward is used, but that has been interpreted by the most eminent Judge who ever lived in Lower Canada, Chief Justice Sewell, to mean undoubtedly north.

*By Mr. DeCosmos :*

308. What do you consider the eastern boundary of Assiniboia?—I do not exactly remember at this minute, but I could easily verify it. The question as to how Assiniboia was erected is a long story. The Earl of Selkirk affected to surrender or to surrender, to the Hudson's Bay Company a large tract of country which is now comprised in the State of Minnesota; no doubt of that. But the limits of Assiniboia,



while I was there, I do not now exactly remember. I could, however, verify it in a moment by my report, because when I was sent up as Commissioner in 1870 or 1871, to report upon the state of the laws that existed previous to the establishment of Manitoba, I considered that question involved, in a certain degree, the geographical extent of the country; and although the title of the Hudson's Bay Company had been admitted by the surrender which was accepted of their title by the Crown of England and by Canada, still I had to report what the laws were, and in my report I find that the district of Assiniboia, long after the Earl of Selkirk had surrendered his rights to the Hudson's Bay Company, was constituted and defined by the Board of Directors of the Hudson's Bay Company in London. I have that here.

*By Mr. Robinson :*

309. There never was any setting out by stakes and bounds officially of the district of Assiniboia?—I am not able to say whether there was or not; my impression is there was. There were two eminent surveyors in olden times, Messrs. Thomson and Taylor, and I always understood a survey had been made. But I will not answer the question with certainty. I always took it for granted such had been done.

*By the Chairman :*

310. You say that the surrender of the title of the Hudson's Bay Company to the Crown of England and to Canada, and its acceptance by them, established its validity? Have you opinions of learned counsel as to the validity of the Hudson's Bay Company's charter, and the extent of territory it covered?—There have been a series of opinions from the earliest times, going back to the day of Lord Mansfield, then, Mr. Murray, and coming down to the present day, which, with very little variation, have always maintained the right of the company to the soil, and to the territory; but have not maintained with equal certainty their right to exclusive trading privilege. I take it that the Crown of England had the same right to grant land when it was granted by King Charles, that the Crown in Canada has to grant land now apart from exclusive trade privilege. It was in the year 1839, on the 13th March at a general court held in the Hudson's Bay House, London, that the district of Assiniboia was erected and was declared "co-extensive with such portions of the territory (these are the words of the order) granted to the late Thomas, Earl of Selkirk on the 12th June, 1811, as is now within the domains of Her Britannic Majesty." That is what constituted the district of Assiniboia, and it so constituted *de facto*, whatever its precise extent, it has certainly been recognised by a series of Acts by the British Government. I may state more than that: I came down from the Red River country in the fall of 1858. Mr. Watkin was in this country, and was associated with Sir Edmund Head in connection with the interests of the Hudson's Bay Company, or with respect to some proposition for establishing a Government in that territory by and-by. It was felt it could no longer be held as a monopoly. I was, at the request of the Duke of Newcastle, called upon to draw up a report and make a recommendation as to the form of Government which was desirable. This was in 1863. I reported in favor of a Crown colony. I believe Sir Edmund Head did so too. Most certainly the Duke of Newcastle recognised as a possible event that the Crown of England might make a Crown colony of it. I believe it was a mere accident that it was not done. At one time it was considered, not only desirable, but almost certain that it would be made a Crown colony, which is perfectly at variance with its being part of Upper Canada.

311. You had a judicature established there for the trial of criminal cases?—Yes. The validity of the company's charter, in that respect, has always been acknowledged by the law officers of England. They administered justice there, perhaps in a ready but in a very efficient manner; and on one occasion, I am happy to say not in my time, but in that of my predecessor, an Indian was tried for his life. He was found guilty by a jury, condemned to be executed, and was executed just outside Fort Garry.

312. So that it was *de facto* a separate colony?—It was unquestionably. It was *de facto* a separate colony, and recognised as such by the Crown of England, while

estimated more than once the possibility of their exercising their authority there quite independent of Canada.

*By Mr. DeCosmos :—*

313. I understood that the territory of Assiniboia was the same as that which had been granted to Lord Selkirk?—Partly so.

314. What I desire to have is a description of those boundaries.—No doubt what Lord Selkirk assumed to own, and the country he intended to settle, extended over a very great part of what is now Minnesota, and which before it became Minnesota, was the territory of Dakota and Minnesota, now forming two States.

*By Mr. DeCosmos :*

315. The international boundary fixes conclusively the fact that the territory of Upper Canada cannot go further south; but what we want to know is, what documentary evidence can be produced to show how far the boundary of Assiniboia went east along the international boundary, or how far the boundary of Upper Canada went west along the international boundary—I take it everything that was west of a due north line from the confluence of the Mississippi and Ohio was Assiniboia? I think so.

*By the Chairman :*

316. Or Hudson's Bay Company's territory?—Or Hudson's Bay Territory, but Assiniboia certainly used to bring in criminals from some distance and try those criminals from *Bout de la Rivière*, at the foot of Lake Winnipeg, and Winnipeg River, just where the river runs into the lake.

*By Mr. DeCosmos :*

317. Are there any records of criminals having been brought in from the Lake of the Woods?—Not that I know of.

318. Or east of the water-shed?—Not that I know of. I know of no instance in which it was found necessary to do that. I do not know that the authority of Assiniboia would have been assumed. I think probably one of the Statutes vesting jurisdiction in the Province of Lower and Upper Canada would have been invoked. There were two Acts, and one of them would probably have been invoked; but at all events, whichever was invoked, it was not considered Upper Canada, or it would not have been necessary to give jurisdiction to the Provinces.

*By Mr. Ouimet :*

319. How did Lord Selkirk come into the possession of that vast territory called Assiniboia, and how did it pass afterwards into the hands of the Hudson's Bay Company?—The old Canada Company, called the North-West Company, gave certain rights in the first instance; what they were I do not know, and I have never seen any instrument attesting them to Lord Selkirk, who brought out a number of Scotch and Shetland Island emigrants and settled them there.

*By Mr. DeCosmos :*

320. In other words, it was merely a quit claim. They surrendered their possessory rights?—The North-West Company assumed to be trading there, and the Hudson's Bay Company said the country was theirs, and there was a battle fought the Frog Plains between them, but the country eventually came back to the Hudson's Bay Company.

*By Mr. Robinson :*

321. The North-West Company always disputed that the Hudson's Bay Company had territorial rights, and maintained that they should confine themselves to the shores of Hudson's Bay?—I do not know of any pretension of that kind. The North West Company took all they could, and as far traders they rather beat the Hudson's Bay Company.

*By Mr. Ouimet :*

322. But what territorial rights had Lord Selkirk, and were these territorial rights recognised by the Crown of England?—They were not recognised by the Crown of England, so far as I know, in Lord Selkirk's time, only after the establishment by the Company of the colony there under the charter, because under that charter they had distinct rights; they had not only the right of governing and exercising jurisdic-



tion over servants and employees, but another part of the charter distinctly recognized the possibility of a colony being established.

*By Mr. Trow :*

323. The allotments given by Lord Selkirk to settlers were recognised at all time afterwards, were they not?—Yes. The Hudson's Bay Company always exercised the greatest good faith with respect to the land grants. What was called the land system was most imperfect, consisting of a book kept by a clerk; but any representation made or fact ascertained was always at once recognised by the Hudson's Bay Company, and a sort of title given. The settlers always had their rights respected; nobody ever lost land they occupied.

324. These settlements were confined to the Red River bottom lands as a rule?—

Yes.

325. They did not extend to any districts outside?—Originally they were settled for twenty miles on the banks of the Red River between Lower Fort Garry and Upper Fort Garry. The Kildonan settlement was an offshoot from the old settlement.

*By Mr. Royal :*

326. Did Lord Selkirk get any charter from any power?—Lord Selkirk was an usurper. He wanted to do good to some of his Scotch countrymen, and to exclude the North-West Company, if he could, from that country. He was a very energetic man; but from the moment Assiniboia was established as a colony the British Government dealt with it as a colony, and as a separate thing altogether from Upper Canada.

*By Mr. Ouimet :*

327. When was it established as a colony?—In 1839. That is to say, that *de facto* it existed before then; but on the 13th March, 1839, this governing power, the Hudson's Bay Company, made laws for that place.

*Witness.*—Handed in papers and documents to accompany his evidence.

Examination continued :—

*By Mr. Ouimet :*

328. You have told us that after the 6th Regiment was withdrawn by the English Government, pensioners were left there with the understanding that the Hudson's Bay Company would give them lands to settle upon, and also on the condition that they would serve in case of emergency:—Yes; that was the arrangement made between the English War Office and the Hudson's Bay Company. They continued to draw their pay, the Hudson's Bay Company being the Agents of the War Office for that purpose, Col. Caldwell and Captain Hill being the officers of the pensioners there. They were regularly paid for years, and called out annually for drill. They had a uniform, and were to all intents and purposes a military force employed by the Crown of England.

329. Were lands given to them according to agreement?—Yes.

330. In what portion of the settlement?—Generally up the Assiniboine, from Fort Garry up as far as where Burke's used to be, round the bend of the Assiniboine. Some of their descendants now hold those lands.

331. This, according to your judgment, would show that the Crown recognized that the Hudson's Bay Company had the right to dispose of the land; that they had possession of the land and the right to dispose of it?—No doubt of it. No English lawyer has ever given an opinion that the grant was invalid as regards the land. In the very early days of the controversy, there were some gentlemen who were of the opinion that the extent of the territory granted, meant only the immediate shores of Hudson's Bay. That was immediately refuted by the words, "lakes, rivers and inlets," and the extent of their occupation would necessarily be the points to which they could penetrate by these rivers; that is to say, the height of land. That deed existed. When the Act of 1774 came to be passed, that deed was recognized; and it is stated there that their southern boundary should be the northern boundary of the Province of Quebec; and when the Province was divided nothing was said about it at all. Nothing was added to Upper Canada, only it was divided from Lower Canada.

*By Mr. Trow :*

332. Are you of opinion that the Hudson's Bay Company's Charter gave them an absolute right to the soil, or gave them rights merely for trading purposes?—I believe it gave them an absolute right to the soil.

*By Mr. Robinson :*

333. What was the opinion of Sir Arthur Pigott, Sergeant Spankey and Lord Brougham?—There were some early opinions of counsel, and Lord Brougham's was one of them, that the title was circumscribed with respect to the rights of discovery, and limited to the immediate shores of the Bay. I know such opinions were given.

334. Did those opinions not touch the territorial rights of the company?—I don't remember at this moment; but the opinions are all printed.

*By Mr. Ouimet :*

335. Could you find the agreement between the War Office and the Hudson's Bay authorities about those pensioners and their being given land to settle upon by the Hudson's Bay Company?—You would find in the archives at Fort Garry those people's titles to those lands. As to the despatches which passed between the War Office and the Hudson's Bay Company, they are to be found in London.

336. The lands were given as an inducement to send out the military?—The English Government said: "We will send out soldiers and pay them, but in order to ameliorate their lot, you must give them grants of land."

*By Mr. DeCosmos :*

337. Are you aware whether there is any deed of surrender in existence between Lord Selkirk and his heirs and the Hudson's Bay Company?—I am not aware of that. There must have been something, I take it.

338. Are you aware whether there is any deed passing the rights of the North-West Company to Lord Selkirk?—I am not.

*By the Chairman :*

339. Are you aware whether, subsequent to the Treaty of Utrecht, when the French, by that treaty, restored all their possessions on the bay to the English, whether the Hudson's Bay Company were ever afterwards disturbed in possession on the immediate confines of the bay?—As a matter of curious history, I do not know whether it can be exactly ascertained or not. I have known a great many old people in that country, full of traditions, one of which is that the Hudson's Bay Company had establishments on the Albany River at a very early period.

340. I speak of the mere confines of the bay?—I have never heard that the French had really any establishments there after the Treaty of Utrecht.

341. Not subsequent to the Treaty of Utrecht?—They had before they took the forts in 1686.

342. The object of my question is this: There is, on that map on the wall and all the maps of the time, a line called the boundary line of Hudson's Bay. In the instructions to Governors from 1791 to 1838, in describing the dividing line, they say a line drawn due north from the head of Lake Temiscaming to the boundary line of Hudson's Bay; subsequent to 1828 the wording of the Commissions ran "to the shore of Hudson's Bay." Was that boundary line of Hudson's Bay held to be identical with the height of land or the shore?—I have always considered it to be the height of land.

343. The country of the Illinois, was it considered a part of Canada at the time of the cession, or was it considered a part of Louisiana?—This is a subject which is rather nebulous in my mind. I have always had an idea that the Illinois country was a sort of offshoot or territory of Louisiana in ancient times. I do not know that it was ever considered a part of Canada at all, but I would not profess to give a reliable opinion on the subject. My recollection has been that it was something quite apart from Canada.

*By Mr. DeCosmos :*

344. That is, French Canada?—Yes.



*By Mr. Trow :*

345. I consider Judge Johnson to say that the colony of Assiniboia was acknowledged by the British Government, but I do not see that that gives us much information respecting the northern limits of Quebec or Canada?—No; merely with respect to the northern boundary.

346. You have not given us the western limits, because you have not told us how far east that colony was acknowledged to extend?—It was always considered to extend to the boundary of Upper Canada on the south and south-east, namely, the height of land.

347. Were any settlements made on Rainy River or Lake of the Woods?—You cannot call them settlements. I have known eccentric individuals who settled there, one of whom was a Mr. McLeod, but there were no settlements of any importance. About the Rat Portage and Fort Frances, there were several French half-breed families settled.

348. That is, at the head of Rainy River?—The head of Rainy Lake.

*The Chairman :*—Rainy River, or rather its waters, have their source 200 miles to the east of that.

*By Mr. Royal :*

349. Do you think that General Alured Clark's proclamation of 18th Nov., 1791, considering it in connection with the Orders of Council of the 19th and 24th August, 1791, and the Royal Instructions of 12th and 16th September of the same year, to Governor General Lord Dorchester, could have the effect of enlarging the Province of Upper Canada beyond the limits assigned to it by the Act and the Order in Council and instructions based thereon?—Of course any Statute may have been interpreted rightly or wrongly by the Executive, but the interpretation would not alter the Statute.

350. But these instructions must have been based on the Statutes?—Yes.

351. Therefore they could not in any way extend or diminish the territory of the Province of Quebec?—Clearly not.

352. You spoke, some time ago, of the opinions of Lord Brougham; I see the Cavendish papers are often quoted in these volumes. Do you consider them very valuable as an authority on the matter we are considering?—Lord Brougham was asked by the adversaries of the Hudson's Bay Company to give an opinion; it is published in the volumes before us. The Cavendish papers were published in 1832, 65 years after the debates of 1774, and were never considered to be of any importance, but rather hazy. They would have the authority of any report, if published at the time, subject to contradiction or correction by people who could contradict or correct them. But when published 65 years afterwards, when the people who could contradict or correct them were dead, they could not possess any value. They were looked upon as the gossip production of an old gentleman, who was not very eminent, Mr. Henry Cavendish, afterwards Sir Henry Cavendish.

*By Mr. Robinson :*

353. Still they agree very much with the letter of Mr. Burke to his then constituents in York State?—The impression of Cavendish was evidently that it was intended to go to the Mississippi, but I believe it is considered a mistake.

*By the Chairman :*

354. Is there anything about the Mississippi in the Cavendish papers?—I have not seen them for years. I remember when they appeared, I was young at the time; the people looked for them as if they were going to throw light on a number of things, but they did not throw any light that I know of.

*By Mr. Robinson :*

355. You spoke of the decision in the de Reinhardt case. I judge from what you have said, you have given that judgment some consideration.—Yes, but not very lately. I had occasion to look at it in reference to occurrences of many years ago.

356. You mentioned it as settling the question of boundary in your mind?—The question of boundary was specifically raised in that case before Chief Justice Sewell.

357. How was it no force was given to that decision by the execution of the Reinhardt?—I forget whether he was acquitted or found guilty.

358. Do you know whether it was upon an objection taken by the Crown officers in England that the decision was not justified?—I do not know; I forget what the verdict was.

*Mr. Caron* :—He was found guilty, but his case was submitted to the Privy Council. He was pardoned.

*Witness*, continuing :—The line of defence taken by Stuart and Valliere was that this murder, having been committed at the Dalles on the Winnipeg River, was committed in Upper Canada. They failed to establish that. The court was dead against them; no doubt about that. Chief Justice Sewell, who tried the case, is looked upon as the greatest luminary of the law we ever had in Lower Canada. It may almost be said that he made our laws.

*By Mr. Robinson* :

359. I see that Sir George Cartier in a despatch which he sent to the English in 1869, when he was associated with Mr. McDougall, styled the Hudson's Bay Company, touching the territory which they claimed from Lake Superior to Winnipeg, as squatters?—That was with the view of getting the title as cheaply as he could.

360. He gave his reasons?—He was treating with them and was prepared to give them money, £300,000. Of course he wanted to cheapen their title as much as he could. I do not want to say that, in giving that opinion, he was not quite sincere. The view he and Mr. McDougall took was propounded with a great deal of force by Mr. McDougall, but all with the object of buying the territory.

*By Mr. Royal* :

361. In the instructions that were given to you as Recorder, was any territorial jurisdiction assigned?—The district of Assiniboia; I had to find that out for myself; I never gave myself much trouble to find it out.

*By Mr. Robinson* :

362. The demand you made, when you were sworn in as Governor, for troops: did you make it direct to the English or Canadian Government?—I was instructed to make it to the Hudson's Bay Company, who were my immediate superiors, and they applied to the English Government, and the troops were sent out. They came out by York Factory, and proceeded by way of Nelson River up to Fort Garry.

*Original paper handed in by the Honorable Mr. Justice Johnson.*

To His Excellency the Right Honorable John, Baron Lisgar, of Lisgar and Baillieborough, one of Her Majesty's Most Honorable Privy Council, Knight Grand Cross of the Most Honorable Order of the Bath, Knight Grand Cross of the Most Distinguished Order of St. Michael and St. George, Governor General of Canada, &c., &c.

I, the undersigned Special Commissioner appointed by instrument under the Great Seal of Canada, bearing date at Ottawa, the third of September, 1870, to proceed to Fort Garry and investigate, enquire and report as therein directed, have the honor to make the following report:—

I was required by my Commission to ascertain and report,

1st. The state of the laws, regulation and institutions or ordinances, lawfully in force in Manitoba, up to the 15th July, 1870.

2nd. The mode of administering Justice in Manitoba, the organization of Courts, the number and mode of appointment of Justices of the Peace, and Police arrangements, together with the means employed for the administration of Justice thereunder, and the measures adopted for keeping the peace.

3rd. To transmit copies of laws, institutions, ordinances, or regulations having the force or effect of law up to the date aforesaid, whether made by the Hudson's Bay Company or by any other lawfully constituted authority on that behalf.



4th. To report what measures it might be expedient to adopt for the introduction into the Province of Manitoba of the system of criminal law and criminal procedure now in force in the other Provinces of the Dominion of Canada.

5th. To make similar enquiry and report with respect to the North-West Territories, suggesting such amendments as I might judge proper to facilitate the administration of civil as well as criminal justice in those territories.

These several subjects will now be noticed *seriatim* :

*The State of the Laws in Force in Manitoba up to the 15th of July, 1870.*

King Charles the Second, in the year one thousand six hundred and seventy, granted to the Hudson's Bay Company, under the name of the Governor and Company of Adventurers of England trading into Hudson's Bay, a Charter of incorporation with very extensive privileges and powers, the whole or even the greater part of which it is not necessary for the purpose of this report to describe.

The Charter ordained, amongst other things, that the territory granted to the Company was to be reckoned one of His Majesty's plantations or Colonies in America, and called Rupert's Land, and that the Company were to be the absolute lords proprietors of the same forever. With respect to the power of making laws, the language used in the Charter seems to contemplate, in the first instance, merely the power of making and enforcing such regulations and imposing such penalties and punishments not repugnant to the Laws of England, as the Company might deem necessary for the good government of the territory in respect to their own officers and servants and the protection of their trade.

These powers are conferred in the following words of the Charter:—

" And further we do, by these presents for us, our heirs and successors, make, create, and constitute the said Governor and Company for the time being, and their successors the true and absolute Lords and proprietors of the same territory, limits and places aforesaid, and of all other the premises, saving always the faith, allegiance and Sovereign dominion due to us, our heirs and successors, for the same to have, hold, possess and enjoy the said territory, limits and places, and all and singular other the premises hereby granted, as aforesaid, with their and every of their rights, members, jurisdictions, prerogatives, royalties and appurtenances whatsoever, to them the said Governor and Company and their successors forever, to be holden of us our heirs and successors, as of our Manor of East Greenwich, in our County of Kent, in free and common socage, and not in *capite* or by Knights service; yielding and paying yearly to us, our heirs and successors for the same, two elks and two black beavers, whensoever and as often as we, our heirs and successors, shall happen to enter into the said countries, territories and regions hereby granted; and further our will and pleasure is, and by these presents for us, our heirs and successors, we do grant unto the said Governor and Company, and to their successors, that it shall and may be lawful to and for the said Governor and Company, and their successors from time to time to assemble themselves for or about any the matters, causes, affairs or businesses of the said trade in any place or places for the same convenient within our dominions or elsewhere, and there to hold Court for the said Company, and the affairs thereof; and that also it shall and may be lawful to and for them and the greater part of them, being so assembled and that shall then and there be present in any such place or places whereof the Governor or his Deputy for the time being to be one, to make, ordain and constitute such and so many reasonable laws, constitutions, orders and ordinances as to them or the greater part of them being then and there present shall seem necessary and convenient for the good government of the said Company and of all Governors of colonies, forts and plantations, factors, masters, mariners, and other officers employed or to be employed in any of the territories and lands aforesaid and in any of their voyages; and for the better advancement and continuance of the said trade or traffic and plantations, and the same laws, constitutions, orders and ordinances so made, to put in use and execute accordingly, and at their pleasure to revoke

"and alter the same or any of them as the occasion shall require, and that the said Governor and Company, so often as they shall make, ordain or establish any such laws, constitutions, orders and ordinances in such form, as aforesaid, shall and may lawfully impose, ordain, limit and provide such pains, punishments, and penalties upon all offenders contrary to such laws, constitutions, orders and ordinances, or any of them as to the said Governor and Company, for the time being or the greater part of them then and there being present, the said Governor or his Deputy being always one, shall seem necessary, requisite or convenient for the observation of the same laws, constitutions, orders and ordinances, and the same fines and amerciaments shall and may by their officers and servants from time to time to be appointed for that purpose, levy, take, and have to the use of the said Governor and Company and their successors without the impediment of us, our heirs, or successors, or of any the officers or ministers of us, our heirs, or successors, and without any account therefore to us, our heirs or successors, to be made; all and singular which laws, constitutions or orders and ordinances, so, as aforesaid, to be made, we will to be duly observed, and kept under the pains and penalties therein to be contained, so, always, as the said laws, constitutions, orders and ordinance, fines and amerciaments, be reasonable and not contrary or repugnant, but as near as may be agreeable to the Laws, Statutes or Customs of this our Realm."

The powers and privileges granted with such amplitude of expression, seem, nevertheless, to apply more particularly to the government of the Company's officers and servants, as far as one object only of the Charter was concerned, viz., that of extension of trade, and the regulations necessary for carrying it on at forts, factories and other places, where a large number of persons of different rank in the service were employed. Accordingly, in a subsequent part of the instrument, as if in contemplation of a future when, as a natural consequence of the establishment of forts and factories, and the employment of numerous officers and servants, settlements should come to be formed, as well as persons who had ceased to be in the service, as of their descendants and other powers to legislate and to administer justice, civil and criminal, as regards all other persons living within the territories, are expressly conferred in the following terms: "And further of our special grace, certain knowledge and mere motion, we do for us, our heirs and successors, grant to and with the said Government and Company of Adventurers of England trading into Hudson's Bay, that all lands, islands, territories, plantations, forts, fortifications, factories or colonies where the said Company's factories and trade are or shall be within any of the forts, or places afore limited, shall be immediately from henceforth under the power and command of the said Governor and Company, their successors and assigns, saving the faith and allegiance due to be performed to us, our heirs and successors, as aforesaid; and that the said Governor and Company shall have liberty, full power, and authority to appoint and establish Governors and all other officers to govern them, and that the Governor and the Council of the several and respective places where the said Company shall have plantations, forts, factories, colonies, or places of trade within any the countries, lands or territories hereby granted, may have power to judge all persons belonging to the said Governor and Company, or that shall live under them, in all causes, whether civil or criminal, *according to the laws of this Kingdom, and to execute justice accordingly*; and in case any crime or misdemeanor shall be committed in any of the said Company's plantations, forts, factories, or places of trade within the limits aforesaid, where judicature cannot be executed for want of a Governor and Council there, then in such case it shall and may be lawful for the Chief Factor of that place, and his Council to transmit the party, together with the offence, to such other plantation, factory or fort where there shall be a Governor and Council, where justice may be executed, or into the Kingdom of England, as shall be thought most convenient, there to receive such punishment as the nature of his offence shall deserve."

I assume that what is required of me in this report, is a statement of the laws and institutions *de facto* existing and administered up to the 15th of July, 1870. I therefore purposely abstain from offering any remarks upon a question which, but



for recent events, would have been one of great interest and importance, that is to say, the question of the geographical limits and extents of Rupert's Land, within which the rights and powers of the Hudson's Bay Company were to be exercised.

That question, depending as it did upon historical facts, treaties and Statutes, for the determination of what extent of country was occupied by the subjects of the King of France at the time the Charter of Charles the Second was granted, and also upon the effect of the Acts of Parliament of 1774 and 1791, in fixing the boundaries of Canada, was one of great importance in its time, but is not embraced in the objects of this commission.

Whatever interest may formerly have attached to that question, has, of course, been superseded by the recent public Acts of the Executive, both in England and in Canada, and by the authority of Imperial and Canadian legislation.

It is enacted in the 2nd section of the Rupert's Land Act (Imperial), 1863, that for the purpose of that Act, "the term Rupert's Land shall include the whole of the land and territories held or claimed to be held by the said Governor and Company;" and the 5th section provides that "until otherwise enacted by the Parliament of Canada, all the powers, authority and jurisdiction of the several courts of justice now established in Rupert's Land, and of the several officers thereof, and of all magistrates and officers thereof, and of all magistrates and justices now acting within the said limits shall continue in force and effect therein.

The Act of the Canadian Parliament, 32 and 33 Vic., c. 3 (1869), provides that all existing laws are to remain in force until otherwise ordered by the Lieutenant-Governor under the authority of that Act, and public officers and functionaries are to retain their offices and continue to exercise their functions.

The Statute of the Canadian Parliament to amend and continue the last mentioned Act, and to establish and provide for the Government of the Province of Manitoba, creates a Province consisting of the greater part of the former district of Assiniboia, the principal settlement or colony under the government of the Hudson's Bay Company in that part of the country, and which the opponents of their rights had formerly maintained to be within the limits of Canada; and, finally, the Parliament of Canada and Local Parliament of the Province of Manitoba have part of them, in various statutory enactments, recognized and continued throughout the entire Province the authority of the laws passed by the Governor and Council of Assiniboia, and of the courts of justice formerly existing in that district under their authority.

Without, therefore, expressing any opinion upon the merits of a former controversy, it seems clear that at the present time, the Dominion of Canada has established the Province of Manitoba upon the recognition of the Company's title which is involved in the surrender to the Crown of the whole territory that was occupied by them, and which was the basis of the Order in Council of Her Majesty admitting the country into the Union or Dominion of Canada.

By Royal Charter, then, Rupert's Land was constituted one of His Majesty's colonies or plantations in America, and by the words of the Charter above quoted, power was given to the Company to administer Justice civil and criminal, according to the laws of this Kingdom. Even if the Charter had been silent on this subject, there is no doubt that in the case of an English colony of this kind, as contradistinguished from colonies acquired by the conquest, cession or descent, the English laws, so far as they are applicable to the condition of an infant settlement, are *ipso facto* in force for the reason that there can be at first be no existing law to contest the superiority. (A.)

Under the authority of the Charter (B.) also, the Hudson's Bay Company, from the time they re-acquired that portion of the country from the Earl of Selkirk ( ) to whom they had made a grant of it in 1811, made some regulations suited to the state of the country through a Governor and Council for the government of the

A.—Clark's, Col. Law.—Burge's, Col. and Foreign Law.

B.—Charter, Hudson's Bay Company.

settlers in the Selkirk or Red River Settlement, the only settlement then existing in their territories where any considerable number of persons had their abode.

This state of things continued up to the year 1839.

On the 13th of March of that year, at a General Court held at the Hudson's Bay House in London, by the Governor and Committee, "the District of Assiniboia was erected, and was to be co-extensive with such portion of the territory granted to the late Thomas, Earl of Selkirk, on the 12th day of June, 1811, as is now within the Dominions of Her Britannic Majesty." (C.)

At the same time, and by the same authority, a Governor and Council of Assiniboia were appointed, and also a judicial officer by the style of "Recorder," who thereafter administered justice at regular quarterly courts, in all cases civil and criminal, as nearly as possible in accordance with English Law, and with the aid of a jury. (D.)

The Governor and Council of Assiniboia soon recognized the necessity of adopting the alterations and improvements that had been made in the laws of England since the time of King Charles II., and desired to introduce, as far as they could be made applicable to the circumstances of the country, the English law as it existed at the time of Her present Majesty's accession, and subsequently they wished to extend the modern laws still further by introducing the existing laws of England for the time being.

With this view they passed the 53rd Article of the Laws of the Governor and Council of Assiniboia, as revised on the 11th April, 1862, and afterwards the amendment of the 7th January, 1864.

The first of these enactments was in the following words: "In place of the laws of England of the date of the Hudson's Bay Company's charter, the laws of England of Her Majesty's accession, so far as they may be applicable to the condition of the colony, shall regulate the proceedings of the General Court, till some higher authority or this Council itself shall have expressly provided either in whole or in part to the contrary."

The amendment is in the language following: "To remove all doubts as to the true construction of the 53rd Article of the Code of the 11th April, 1862, the proceedings of the General Court shall be regulated by the laws of England, not only of the date of Her present Majesty's accession, so far as they may apply to the condition of the colony, but also by all such laws of England of subsequent date as may be applicable to the same. In other words, the proceedings of the General Court shall be regulated by the existing laws of England for the time being, in as far as the same are known to the Court and are applicable to the condition of the colony." (E.) It is obvious that the language of either and both of these enactments is inadequate to extend the laws of England of either of the periods herein mentioned to the rights and obligations of the inhabitants; the express terms, both of the one and of the other, being restricted to the regulations of the proceedings of the court. Contemporaneous English law was, nevertheless, deemed to have been introduced and was considered to be applied by the Court to the cases that came before it. (F.)

The general principles of English law, as understood to have been modified as above by the action of the Governor and Council of Assiniboia, together with such local regulations as that body made from time to time, constituted the body of law existing in the District of Assiniboia.

These laws of the Governor and Council were enregistered in a book, as they were passed and were in the form of resolutions until the year 1862. On the 11th of April of that year they were revised; that is to say, all local enactments that were

C.—The grant by the Company to Lord Selkirk had included a considerable portion of what is now the State of Minnesota and the Territory of Dakota.

D.—Extract of proceedings of General Court of Hudson's Bay Company in London. See Appendix.

E.—Revised Laws of Governor and Council of Assiniboia, Act 53, 11th January, 1862.

F.—The Supreme Court Bill passed by the Parliament of Manitoba; Amendments, 7th January, 1864, but regulated this subject. See Sections 30 and 33.



in force on the 13th of March, 1862, were repealed, and the Revised Laws of Assiniboia were enacted. Subsequently to that time, amendments and alterations of the Revised Laws continued to be made by the Governor and Council. The whole of these laws are comprised in the appendix to this report under the third head of enquiry, indicated by my commission, and directing me to furnish copies of the laws in force up to the 15th of July, 1870.

I should observe that the revision of 1862, though it repealed the laws in force on the 13th of March of that year, and re-enacted most of them, omitted to re-enact a law of the Governor and Council of the 4th of July, 1839, by which trial by jury in all criminal cases, and in civil cases for more than ten pounds sterling, was established. The qualification of petit jurors had been also fixed, and the mode of making the lists defined by regulations of the same date (4th July, 1839).

These regulations remained in force and were acted upon up to the date of the revision (11th of April, 1862). They were then repealed, but no other regulations on those subjects were made. From the 11th of April, 1862, up to the 15th July, 1870, petty jurors were summoned under the assumed authority of the old law, or under the common law of England, as understood to prevail, and there never was in the laws of Assiniboia any law whatever respecting grand jurors, their qualification or the mode of making the list. (G.)

In the year 1867 the British North America Act was passed by the Imperial Parliament which so far affected the laws in force in that part of the territory which is now the Province of Manitoba, that amongst other things it made provision for the eventual admission into the Union of other parts of British America besides Canada Nova Scotia and New Brunswick, and in the execution of that purpose the Rupert's Land Act of 1868 (Imperial), was enacted, and in express terms continued in full force and effect "until otherwise enacted by the Parliament of Canada, all the powers, authorities and jurisdiction of the several Courts of Justice now established in Rupert's Land, and of the several officers thereof, and of all Magistrates and Justices now acting within the said limits."

The Parliament of Canada, on the 22nd June, 1869, enacted the Statute 32 and 33 Vic, c. 3, for the temporary government of Rupert's Land and the North-West Territory when united with Canada, which contained similar provisions, recognizing and continuing established institutions and existing offices. Besides the general body of law existing, as above described, up to 15th July, 1870, some Imperial legislation from time to time took place, which though it can hardly be said to have had any practical effect in the country now constituting Manitoba, nevertheless extended to it.

This legislation is comprised (1803) in the Imperial Statutes 43rd Geo. III, c. 138, the 1st and 2nd Geo. IV., c. 66 (1821) and the 22nd and 23rd Vic., c. 26, 1859.

The first of these Statutes enacted that all offences committed within any of the Indian territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any Civil Government of the United States of America, shall be, and be deemed to be offences of the same nature, and shall be tried in the same manner, and subject to the same punishment, as if the same had been committed within the Provinces of Lower or Upper Canada. It also gave power to the Government of the then Governor of the then Province of Lower Canada to appoint persons to act as Justices for the Indian territories for the purpose merely of hearing and committing for trial in Lower Canada, whereof the Governor, if the circumstances of the case made it more convenient to have the trial in Upper Canada, could send the offender to that Province, and by instrument under the Seal of the Province of Lower Canada, cause him to be tried in the Upper Province.

The second Statute (1st and 2nd Geo. IV., c. 66), enacted that the Act of the 43rd of Geo. III should be extended to, and be in full force in and through all the territories of the Hudson's Bay Company.

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G.—The Supreme Court Bill of the Manitoba Parliament has supplied their deficiencies, and empowered the General Quarterly Court to exercise at its usual sittings the authority of the Supreme Court, until a Chief Justice shall be appointed by the Government of Canada.

Sec. 5. It further gave jurisdiction in civil cases in these territories to the Courts of Upper Canada.

Sec. 6. It also conferred power on the Government of Lower Canada to name Commissioners in the Territories for the execution of the processes of the Canadian Courts.

Sec. 10. It gave power to the Crown to appoint Justices of the Peace in these Territories on special terms, including the Territories granted to the Hudson's Bay Company, with power to such Justices to take evidence in the country, to be used in the Courts in Upper Canada.

Sec. 11. It gave further power to the Crown to issue commissions under the Great Seal, empowering Justices to hold Courts of Record for the trial of criminal offences and misdemeanors, and also of civil cases, notwithstanding anything contained in the Hudson's Bay Company's Charter.

Sec. 12. Such Courts as to the number of justices, and as to the times and places of holding them, either within or beyond the territories of the Company, were to be constituted as His Majesty should direct, but their power was not to extend to the trial of capital offences, nor to civil actions wherein the amount in issue exceeded two hundred pounds.

Sec. 14. By the last section, all the rights, privileges, authorities and jurisdictions which the Hudson's Bay Company could by law claim and exercise under their Charter were to remain in as full force, virtue and effect as if the Act had never been made.

The third, in this series of Imperial Statutes, is the 22nd and 23rd Vic., c. 26.

This Act recites the main provision of the 43rd Geo. III., and of the 1st and 2nd Geo. IV., and empowers the Crown either by commissions appointing justices under the latter Statute, or by subsequent commission, or by Order in Council, to authorize such Justices to try in a summary way all crimes, misdemeanors and offences whatsoever, and to punish by fine or imprisonment, or both. In cases punishable by death, or in which, in the Justice's opinion, fine and imprisonment were inadequate to the offence, they might either try the offender in the ordinary way, or send him to Upper Canada to be tried there under the Act of Geo. IV., or if they saw fit, to British Columbia, to be tried by any Court having cognizance of a like offence committed there. This last mentioned Act, however, in the final section is declared not to extend to the territories granted to the Hudson's Bay Company. The reason of this exception is apparent in the preamble of the Statute which recites, that although the Acts of 1803 and of 1821 had been passed, the Crown had never given effect to those laws. No Justices had been appointed, and no Courts of Record established by the Crown, nor had the Governor of Lower Canada ever appointed any Commissioners to execute the processes of the Canadian Courts, and therefore it became necessary to make provision for the Indian territories that were not included in the limits of the Charter, leaving to the courts established by the Hudson's Bay Company in their territories the authority and jurisdiction that belongs to them.

## II.

The mode of administering justice in the General Quarterly Court has been indicated under the preceding head of this report.

It is proper, however, to observe that the authority to administer justice under the Charter was conferred upon the Governor and his Council, and they, in their own persons, in the early history of the colony, administered justice without the aid of a judicial officer.

On the 12th of February, 1835, it was resolved by the Governor and Council of Assiniboia: "That a General Court of the Governor and Council shall be held at the Governor's residence on the last Thursday of every quarter, at which the Magistrates shall attend, where cases of a more serious nature, cases of debt exceeding forty shillings, and all appeal cases from the decisions of Justices of the Peace, shall be examined into, such court to be adjourned from day to day until all the cases in hand



be disposed of; and as a check on frivolous and vexatious litigation, that the prosecutor shall pay into Court a fee of three shillings before any warrant shall be issued, and in cases of appeal from the Justice of Peace Court to the Court of the Governor and Council, a fee of five shillings be paid into Court by the appellant."

After the appointment of a Recorder (1839), the administration of justice in the General Quarterly Court practically devolved upon that officer.

Although the provisions of the 1st and 2nd Geo. IV., c. 66, section 12, limited the jurisdiction of the Courts to be created under that statute, in criminal cases to non-capital offences, and in civil cases to the amount of two hundred pounds, no such limit had ever been imposed upon the courts existing under the Royal Charter, and they exercised civil and criminal jurisdiction without any limitation as to the amount demanded or the character of the offence. The form of trial was in accordance with English practice, viz.,—with the aid of a jury and either party might make the other a witness. These courts had also, under the charter, the power to try offenders who were sent to them from the distant parts of the country where there might be no Governor and Council to try them. The words of the charter that gave this power are as follows:—"That the Governor and his Council of the several and respective places where the said Company shall have plantations, forts, factories, colonies or places of trade within any the countries, lands or territories hereby granted may have power to judge all persons belonging to the said Governor and Company, or that shall live under them in all causes, *whether civil or criminal according to the laws of this Kingdom*, and to execute justice accordingly, and in case *any Crime or Misdemeanour shall be committed* in any of the said Companies, plantations, forts, factories or places of trade within the limits aforesaid where Judicature cannot be executed for the want of a Governor and Council there, then in such case, it shall and may be lawful for the Chief Factor of that place and his Council to transmit the party, together with the offence to such other plantation, factory or fort where there shall be a Governor and Council, where justice may be executed or into this Kingdom of England, as shall be thought most convenient."

By the local laws, Constables to the number of twelve, holding office for three years, and at an annual salary of twelve pounds sterling, were appointed by the Magistrates who assembled once in each year (on the last Thursday) for the purpose of appointing to vacancies and considering complaints. The constables were liable for misconduct to be suspended by the Petty Courts or by any Magistrate, and to be dismissed by the General Court.

2. Petty Courts were constituted under the authority of the same laws, having cognizance of debts (except those due to the public revenue) not exceeding five pounds sterling; and also of all petty offences punishable by not more than forty shillings fine or penalty, and had special jurisdiction of cases arising from breach of the liquor laws, and of the laws respecting the supplying of intoxicating drinks to Indians.

For the purposes of these Petty Courts, the district was divided into three sections, defined in the law, for each of which a presiding and three other Magistrates were assigned at salaries varying according to the extent of the duty to be performed in each section. The President and two Magistrates constituted a quorum, and there was an appeal to the General Court given from their judgments where they exceeded two pounds. The Petty Court of each section had jurisdiction co-extensive with the limits of such section only, and in these, as in the General Court, either party to a suit might be made a witness by the other.

### III.

#### *Copies of Laws in Force up to 15th July, 1870.—To be furnished.*

Under this head I have the honor to append to this report the documents numbered 1, 2, 3, 4, 5, and 6.

No. 1. Charter of Incorporation granted by King Charles II. to the Governor and Company of Adventurers of England trading into Hudson's Bay. 2nd May, 1670.

No. 2. Statute of Imperial Parliament (1803), 43rd Geo. III., c. 138.

No. 3. Statute of Imperial Parliament (1821), 1st and 2nd Geo. IV. c. 66.

No. 4. Statute of Imperial Parliament (1859), 22nd and 23rd Vic., c. 26.

No. 5. Extract from proceedings of a General Court held by the Governor and Committee of the Hudson's Bay Company in London, 13th March, 1839.

No. 6. Laws of the Governor and Council of Assiniboine as revised 11th April, 1862, and continued afterwards to the latest session of that body.

#### IV.

*Measures expedient for introduction into Province of Manitoba of the Criminal Law in force in the other Provinces of Canada.*

On the 4th of January, 1871, I had the honor to make a preliminary report under this head, of my commission, and to recommend, first, that the system of criminal law and criminal procedure existing throughout the rest of the Dominion, under the Statutes of Canada of 1869, should be extended with all convenient celerity to the Province of Manitoba, to the extent, and with the amendments which I then suggested, that is to say, that the thirteen consecutive chapters of the Statutes of the Parliament of Canada of the 32nd and 33rd Vict., from chapter 18 to chapter 30 inclusively; 2dly, that the General Court now existing, and any Court that might be constituted by the Local Legislature to supersede it, should be empowered to take cognizance of all criminal offences committed either in the Province of Manitoba or in any part of the North-West Territories; 3dly, that in the circumstances of this country, the right possessed by the Queen's subjects in the Province of Quebec, speaking either in English or the French language, to elect to be tried by a jury composed one-half of persons speaking the language of the defence, should be extended to the inhabitants of Manitoba and the rest of the Territories.

As these suggestions and amendments have been adopted by the Parliament of Canada, since I had the honor of making that report, it becomes unnecessary that I should now repeat the reasons of law and expediency upon which they were based.

TUESDAY, March 23rd, 1880.

The Committee met at 10:30 a.m. Mr. DAWSON in the chair.

THOMAS HODGINS, Q.C., of Toronto, called and examined.

*By the Chairman.*

363. You were, I believe, Counsel for Ontario in the case of the boundaries when it came before the Arbitrators?—I was one of the Counsel; the Attorney General was the leading Counsel.

364. At what time did the Arbitrators sit?—They sat in Ottawa on the 1st, 2nd and 3rd August, 1878.

*By Mr. Trow:*

365. I suppose you have examined the case in all its bearings from an Ontario point of view?—Yes.

*By Mr. Ross:*

366. Where does the word "northward" on which so much of the argument seems to rest, first occur, according to your knowledge of the subject?—It occurs in the Quebec Act.

367. What was the object of that Quebec Act of 1774, as you understand its preamble?—I should mention that prior to that Act there had been a proclamation



issued by the Crown the year of the cession of Canada, 1763, creating the four Governments of Quebec, East Florida, West Florida, and Grenada. The then Province of Quebec was given very narrow boundaries. You will find on the map that they extended from River Saint John, near Anticosti, to Lake Nipissing; from thence to about where Brockville now stands, and then along what is now the international boundary and thence in a devious course to the Bay of Chaleur. The preamble of the Quebec Act recites that certain countries, territories, and islands, in America were ceded to His Majesty by the definitive treaty of peace concluded at Paris, on the tenth day of February, 1763, and that by the arrangements made by the said Royal Proclamation, a very large extent of country within which there were several colonies and settlements of the subjects of France who claimed to remain therein under the faith of the said Treaty, was left without any provision being made for the administration of civil government therein. The intention of that Act as appears from the preamble was to bring within civil government those territories in which there were colonies and settlements of the subjects of France. The objects of that Act are also stated at page 388 of "Statutes, documents and papers bearing on the discussion respecting the "northern and western boundaries of the Province of Ontario" thus: "The particular "object of the bill were to augment the importance of the Province of Quebec by "extending its limits southward to the banks of the Ohio, westward to the banks of "the Mississippi and northward to the boundary of the Hudson's Bay Company."

*By the Chairman :*

368. On whose authority is that given?—On the authority of Mr. William Russell author of "The History of America."

*By Mr. Ross :*

369. Were there French possessions or forts, or settlements along the eastern bank of the Mississippi, or that part of it north of its junction with the Ohio, or junction of the Ohio with it?—There were. If you examine this territory between what may be called the Disputed lines, that is the line of the Mississippi river and the line due north from the junction of the Ohio and Mississippi, you will find that there were several well-known French settlements and trading posts within those disputed lines. There was Fort Kaministiquia, which was specially named in Mackenzie's travels as being under the French Government of Canada; also Forts St. Pierre, St. Charles La Pointe, Bonsecœur, St. Croix, St. Nicholas, Crevecoeur, St. Louis, Kaskaskias and some settlements on Lake Superior. It would appear that some of these forts and settlements would be cut in two by a line drawn due north from the junction of the Ohio and Mississippi.

*By Mr. DeCosmos :*

370. Were any of those forts west of that due north line?—Yes, all of those whose names I have just mentioned.

*By Mr. Trow :*

371. The intention of the Act was to include those forts particularly?—The intention of the Quebec Act was to include within civil government those forts and settlements of the French which had hitherto been excluded, and the result of drawing a line from the junction of the Ohio and Mississippi due north would have been to have left out of the civil government of Quebec all those forts and settlements I have mentioned.

*By Mr. DeCosmos :*

372. Did you mention St. Louis?—Yes.

373. That is St. Louis on the right bank of the Mississippi?—Yes.

374. Just north of the junction with the Ohio?—A little north of the junction.

*By the Chairman :*

375. But that was not in the country ceded?—Yes. It is on the east side of the Mississippi. It must be remembered too, that at the time of the cession of Canada to England, the great contest between the plenipotentiaries was as to the Mississippi line, and it was finally conceded by France, and it became part of the Treaty of Paris, that the line of division should be the line of the Mississippi, and that all eastward of the Mississippi should belong to England, and westward, or Louisiana, should remain the territory of France. This was declared in the Treaty of 1763. There is an

express provision in the Treaty, which declares that the limits between the English and French territory "shall be fixed irrevocably by a line drawn along the middle of the River Mississippi from its source to the River Iberville."

376. Still there were settlements on the Mississippi, which were not a part of Canada. At the time of the surrender to England, was the Illinois country a part of Canada?—The Illinois country, if my memory serves me rightly, had been previously placed by the French King under Government of the Governors of Canada.

*By Mr. Ross :*

377. Have you any other reasons for supposing that by the term "northward" was meant a line along the eastern bank of the Mississippi. Were there commissions of Governors which seem to sustain the position you take or inference you draw from the Quebec Act of 1774?—Yes. The very same year the Quebec Act was passed (it was passed in 1774) a commission was issued to the first Governor General of Quebec, Sir Guy Carleton, and then the Crown by virtue of its prerogative right to interpret the statute in regard to civil government and to extend the jurisdiction of the Governors as it saw fit, gave its interpretation to this indefinite word "northward." The commission which will be found on page 46 of the Ontario documents follows the wording of the Act thus: "Thence along the western boundary of the said Province (Pennsylvania) until it strikes the River Ohio, and along the bank of the said river westward to the banks of the Mississippi, and northward along the eastern bank of the said river to the southern boundary of the territory granted to the Merchant Adventurers of England trading to Hudson's Bay." That Commission makes the very line the northward course of the boundary.

*By Mr. Trow :*

378. That would be to the head of Red Lake?—Yes.

*By Mr. Weldon :*

379. It uses the same words as the Act?—It uses precisely the same words only it interprets the word "northward" by running it along the eastern bank of the Mississippi.

*By Mr. Trow.*

380. That is northward?—It is northward. There could be no other; because whatever was west of the Mississippi was French Territory and within the civil government of France, and whatever was east of the Mississippi was within British territory; and unless we read the line as running along the Mississippi River, you would find the English Government had unnecessarily and improperly left out a small strip of territory between the line "due north" and the river. The commission of the next Governor General, dated 1777, contains a boundary line precisely similar to that described in the commission of Sir Guy Carleton, in December, 1774.

*By Mr. Ross :*

381. Were there not a number of commissions issued, and was it not understood and found necessary through a number of those commissions extending over several years, that the eastern bank of the Mississippi was the western boundary?

*Mr. DeCosmos.*—The commissions contain boundary lines, but that does not say they were the same.

*Witness.*—The other Commissions have been examined, and are substantially the same. With regard to Mr. Ross' question, I would say this: In 1783 all this southern territory to the Mississippi was surrendered to the United States, and became part of that country; then it became a question with the Imperial Government how far west should the jurisdiction of the Governors extend over what remained of the British territory northward of line 49; and you will find that on 2nd April, 1786, the Crown then gave its interpretation to the then boundary of the Province of Quebec, that remained British territory, in the commission of Sir Guy Carleton, who was afterwards Lord Dorchester, and it defined the western limit thus: "Thence through Lake Superior northward of the Isles Royal, and Phillipeaux, to the Long Lake, thence through the middle of the said Long Lake, and the water communication between it and the Lake of the Woods, to the said Lake of the Woods, thence through the said lake to the most northern point



"thereof, and from thence on a due west course to the Mississippi." These words are also in the treaty between England and the United States. Then it went on to say "and northward to the southern boundary of the territory granted to the Merchant Adventurers of England trading to Hudson's Bay." That gave the Governor jurisdiction to the Lake of the Woods, at all events.

*By the Chairman:*

382. Do you consider that instructions to governors could extend or diminish the limits of a Province?—My view is this, that as a matter of prerogative right, the Crown can, where the language of the Statute in regard to the boundaries of a Province is indefinite, give a clearly defined limit to that boundary without an Act of Parliament, or it can, if it pleases, in addition to the territories which the statute prescribes, extend the boundaries of the Province.

383. Then you consider the western boundary of Quebec to have been indefinite?—After you leave the Mississippi, and taking the words of the commission to Sir Guy Carleton "northward to the southern boundary of the territory granted to the Merchant Adventurers of England, trading to Hudson's Bay," it was to some extent indefinite in this, that at that time the Hudson's Bay Company had no inland settlements. They had some few and scattered fringes of settlements on the shores of the bay. They had never pushed inland, and had never taken possession of the inland country. The French had, and there was therefore to some extent an indefiniteness in the boundary line after it left the Mississippi. It was left indefinite as to whether the line touched the settlements on Churchill River, Nelson, Severn, or Albany Rivers.

384. We were considering the word "northward" in the Quebec Act. There is nothing indefinite in the expression "northward to the southern boundary of the territory granted to the merchant adventurers of England trading to Hudson's Bay." The territory of Hudson's Bay was a point to be reached by a northern line. You have said that these settlements were a mere fringe on the Bay. Therefore, if they were a mere fringe on the Bay, would not the inference be that the line would be in the direction of the nearest point of those settlements rather to the eastward than to the westward of north?—Not necessarily so; you must remember that the Crown when establishing a Civil Government generally extends it over the largest extent of its territory. It is the duty as well as the interest of the Crown to bring within the Civil Government it establishes all the people as well as the territory they occupy, and I think you will find in all cases where questions of boundary have been discussed in the Courts that, where by fair inference, they can bring the territory within the control of Civil Government they have so interpreted the political act; because it is, after all, not a question of law but a question of state, as to what the boundaries of territories should be. They have interpreted the Act of the Government in regard to boundaries so as, if possible, to bring within the jurisdiction of Civil Government the largest number of people and the largest extent of territory.

385. Granting that that was the intention, then, I suppose you would agree with what Mr. Mills says in his report, page 185. "The limits of the Province of Ontario, then, are the international boundary upon the south, westward to the Rocky Mountains; the Rocky Mountains, from the international boundary, northward to the most north-westerly sources of the Saskatchewan, eastward until it intersects the boundary line midway between Lake Winnipeg and Port Nelson, at the mouth of Nelson River; and, upon the north-east, the line already indicated, drawn midway between the posts held by England and France just before Canada was ceded to Great Britain." Of course wherever you draw the line there are settlements outside of it, so that giving it the widest definition, it could not meet the condition of taking in all the settlements. The line is described in the treaty of 1774 with great minuteness; the words "western," "westerly," and "southerly" are made use of in that description as you perceive, until you come down to the Ohio. Is it at all likely that a description drawn with so much minuteness in one case would be so vague in the other, that they would have meant some point west and north, which according to the maps of those days, would have passed westward of the territories which the Act says the line must strike?—You are right; there was an indefiniteness in the western boundary

under the Quebec Act; but the Crown in 1791, as it had the right to do, gave an interpretation to that indefiniteness in the Order in Council, which defined the boundaries of the new Province of Upper Canada, and you will find that that western indefiniteness in respect to going north from the Mississippi River, and of including a number of French posts and settlements in what is now known as the Red River Territory, were provided for in the Order in Council, which determined what should be the western limit of Upper Canada. You will find in that Order in Council of 1791, that, after running a line up to the boundary line of Hudson's Bay, it included in the territory of Upper Canada all the territory to the westward and southward of the said line, to the utmost extent of the country commonly called or known by the name of Canada. Under the name of Canada all those settlements to which you refer which had been to some extent left uncertain as to their government by the indefinite wording of the Quebec Act, were apparently brought within the Civil Government of the then Province of Upper Canada.

386. You have quoted the proclamation of General Clarke, and you have said the proclamation was founded on the Order in Council. The Order in Council clearly states that the object of the Act was to divide the then Province of Quebec into two; not certainly to extend it. Now, supposing it could be shown that other instructions—of course you have read the Royal Commission to Lord Dorchester of 12th Sept., 1771, have you not?—Yes.

387. It says the Province shall be divided into two; the Province of Upper Canada, to contain so much of the former Province of Quebec as lies westerly of the line of division, and Quebec to contain so much as lies to the east of the line of division. Supposing it could be shown that instructions subsequent to that commission of 12th Sept. had been issued to Lord Dorchester; supposing that such instructions commanded him to make public some boundary different from that of General Clarke's proclamation; supposing some clear and definite instructions had reached him as to what he was to proclaim and he had proclaimed something different, would not that have been a mistake?—Perhaps you will allow me to explain a little. Suppose the Quebec Act had not been repealed, and the whole western territory which remained after leaving the Mississippi was left indefinite, the Crown would still have had the right to determine the question by a proclamation, because that indicates the action of the prerogative in regard to boundaries, as well as other acts of state, and a proclamation could have been issued bringing in such portions of that western territory as had within it those forts and settlements which it was the object of the Quebec Act to bring within Civil Government, provided they had not been brought in by the legal effect of the Quebec Act.

388. That could have been done and was done at a later date by instructions to the Governors?—No; the territory left undefined could not have been brought within civil government by instructions to the Governors. It must be an act of state, that is, a proclamation under the Great Seal which will control the subjects of the Crown within that territory. There must have been a proclamation giving jurisdiction to the Governor, as the representative of the Crown. I will now answer the question in regard to the proclamation and instructions. The proclamation was issued in 1791 under an Order in Council. The Crown's draft of the proposed boundaries of Upper Canada, under which the Order in Council was issued, was laid before Parliament, and Parliament, with that draft of the proposed boundaries before it, passed the Act which provided for the Civil Government of Upper Canada and for the Civil Government of Lower Canada. No instructions to Governors could alter the proclamation of the Crown in regard to the extent of the boundaries of that territory.

389. I understood you to say that instructions to Governors would alter—would interpret indefiniteness?—So soon as the subjects of the Crown had notice of the proclamation, and were, therefore, by that notice bound, no private instructions that might thereafter issue would either relieve those subjects from their duty to the Civil Government of the Province, or free the Crown from its duty of controlling them through the Civil Government that it had extended over them by the proclamation.



390. But part of the question I asked was this: suppose it could be shown that previous to the proclamation of 1791 the Governor had received instructions with which that proclamation did not correspond; that the proclamation was contradictory of these instructions and in itself; would not the natural inference be that this was a mistaken proclamation?—I think not. The proclamation was issued under an Order in Council. The Order in Council was an act of sovereign authority by the Crown. The instructions were in a measure Departmental regulations which were issued by the Department to which the Governor was subject, and approved by the Crown; but those instructions could not alter the purport of an Order in Council.

391. But if those instructions were drawn in exact conformity with the Order in Council, and if the proclamation could be shown not to be in conformity either with the Order in Council or the instructions, would it not raise a doubt as to the validity of that proclamation?—None but the Crown could take advantage of that. The proclamation was issued, and if the Crown found it contradictory or did not wish it to remain in force, a new proclamation could have been issued.

*By Mr. Weldon :*

392. The proclamation was under the Great Seal?—Yes.

*By the Chairman :*

393. The Commission to Lord Dorchester is dated 12th Sept., 1791. There were subsequent instructions sent to him on Sept. 16th; and the question is, whether those subsequent instructions were brought up before the Arbitrators while they were considering the case and the award. The instructions read as follows:—

EXTRACT from *His Majesty's instructions to His Excellency Lord Dorchester, dated at St. James, the 16th September, 1791, viz :—*

“1st. With these our instructions you will receive our commission under our Great Seal of Great Britain constituting you our Captain-General and Governor-in-Chief in and over our Provinces of Upper Canada and Lower Canada, *bounded as in our said commission is particularly expressed.* In the execution therefore of so much of the office and trust we have reposed in you, as relates to our Province of Lower Canada, you are to take upon you the administration of the Government of the said Province, and to do and execute all things belonging to your command according to the several powers and authorities of our said commission under our Great Seal of Great Britain and of the Act passed in the present year of our reign therein recited and of these our instructions to you, and according to such further powers and instructions as you shall at any time hereafter receive under our signet and sign manual, or by our order in our Privy Council.

“2nd. *And you are with all due solemnity, before the members of our Executive Council, to cause our said commission to be read and published, which being done, you shall then take, and also administer, to each of the members of our said Executive Council, the oaths mentioned in an Act passed in the first year of His late Majesty King George the First.*”

Here, in these instructions, is a clear description of the boundary line to be published and proclaimed to the world, and which corresponds to the letter with the Order in Council. A few weeks afterwards appeared the proclamation of General Clarke, who was not the Governor, but simply a lieutenant acting in his master's absence. He published a proclamation which is perfectly intelligible if you substitute the word “Quebec” for the word “Canada.” Are you aware whether these instructions of 16th Sept. were brought before the Arbitrators?—They were not, and I do not think they would have in any way affected the case. It would have been utterly useless to have brought them up for this reason: these are instructions issued by the Crown, and are not under the Great Seal, and are simply to regulate the personal and public conduct of the Governor, and they in no way affect the subjects of the Crown, except in so far as the proclamations issued thereunder relating to matters of state within the jurisdiction of the Governor affect the subjects of the Crown.

*By Mr. Ross :*

394. These instructions referred to the Commission which the Governor held?—Yes; the Commission under the Great Seal sent four days previously clearly describing the boundaries.

395. Have you got the Commission sent to Lord Dorchester; does that indicate those boundaries?—Here is the Commission. It refers to the Order of the Privy Council. The description in Lord Dorchester's Commission in regard to Upper Canada, which is now Ontario (and this is a material point), says: That the Province of Quebec is to be divided into two separate provinces, to be called the Province of Upper Canada and the Province of Lower Canada, "by a line to commence "at a stone boundary on the bank of the Lake St. Francis, at the cove west of the "Point au Baudet in the limit within the township of Lancaster, and the Seigneurie "of New Longueuil, running along the said limit in the direction of north 34 degrees "west to the western angle of the said Seigneurie of New Longueuil, thence along the "north western boundary of the Seigneurie of Vaudreuil running north 27 degrees "east until it strikes the Ottawa River, to ascend the said River into the Lake Temiscaming, and from the head of the said Lake by a line drawn due north until it "strikes the boundary line of Hudson's Bay"—not the boundary line of the Hudson's Bay Company's territories, but of Hudson's Bay. I may mention just in passing that you will find some nineteen Commissions in which the words are "reach or "strike the boundary line or shore of Hudson's Bay." I may say that at the Arbitration, Sir Edward Thornton mentioned that "shore" was a much more appropriate word to use than "line."

396. Then the Commission says: "The Province of Upper Canada to comprehend "all such land, territories, and islands lying to the westward of the said line of "division as were part of our Province of Quebec, and the Province of Lower Canada to "comprehend such lands, territories, and islands lying to the eastward of the said "line of division as were part of our said Province of Quebec." Will you refer to the proclamation and see what it says?—The description of the line of division between the Provinces of Upper and Lower Canada referred to in the Order in Council of 24th August, 1791, is on page 411. It takes the same line between Lancaster and Vaudreuil "until it strikes the Ottawa River, to ascend the said river into the Lake "Temiscaming, and from the head of the said Lake by a line drawn due north until "it strikes the boundary line of Hudson's Bay, including all the territory to the westward and southward of the said line to the utmost extent of the country commonly "known or called by the name of Canada."

*By Mr. Weldon :*

397. That is General Clarke's proclamation?—Yes; General Clarke's proclamation, which has never to this day been revoked.

*By Mr. DeCosmos :*

398. Do you understand that this proclamation over-rides the right of the Hudson's Bay Company?—No.

399. Do you understand this proclamation to withdraw any rights granted to the Hudson's Bay Company under their Charter?—No.

400. How can you reconcile the Company's retaining possession of all the territory and all the rivers flowing into Hudson's Bay, with also the right of Government, and yet allow the Government of Canada to exercise civil jurisdiction over a portion of the territory to which the Company is entitled? In my opinion it did not interfere with the Hudson's Bay Company's rights. Whatever rights the Company had were chiefly territorial rights. The Crown had, independently of those rights, the prerogative power to extend Civil Government over the territories, the proprietary rights of which it may have granted to the Hudson's Bay Company. Whether the proclamation of 1791 did extend the Civil Government of Upper Canada over those territories or not may be a question for discussion, but the Crown had, undoubtedly, the right to do so. There can be no question that in late years it has not been the policy of the Crown of England to leave under the Government of simply subordinate proprietors the subjects of the Crown. Where those proprietors have not



administered their Government in the interests of the public, the Crown has always come in and extended the Civil Government of the Crown over its subjects.

401. Do you understand this proclamation was an Act of the Imperial Government, extending Civil Government over the Hudson's Bay Company's territories?—In regard to what may be termed any territorial claims of the Hudson's Bay Company to the south shore of Hudson's Bay, if they had any—I use the word advisedly—then this proclamation did extend Civil Government over whatever proprietary rights they had there.

*By Mr. Ross :*

402. The two Governments over-lapped each other?—No; the Hudson's Bay Government being a proprietary or subordinate Government, must always yield to the Crown's Civil Government without any revocation of their rights, if they had rights, which, both as a question of fact and a question of law, I doubt if they had at that southern shore.

*By the Chairman :*

403. You will observe the Order in Council is intended to divide the Province of Quebec into two separate Provinces, not to add or take away from either?—Yes, but I said before that, with respect to the north-westerly boundary of the Province of Quebec, it was left indefinite whether the line from the most northerly part of the Mississippi River went due north up to the Churchill River or to those other places that I have mentioned. It left this north-western territory undefined.

*By Mr. Trow :*

404. Would it not have been natural to infer that a line running northward from the confluence of those rivers until it reached Red Lake, would more likely extend in a similar direction than to the northeast?—Yes, but I do not think, for the purpose of the award which has been made, it is material you to consider whether all this territory was brought within the jurisdiction of Upper Canada by the proclamation of Governor Clarke or not. It is quite clear that the commissions issued to the Governors, after the cession of the southern territory of the Province of Quebec to the United States, did extend the Governor's jurisdiction to the Lake of the Woods.

*By the Chairman :*

405. Then you draw a distinction between the extent of the Governor's jurisdiction and the limits of the Provinces?—I say, simply, it is immaterial for our present discussion, whether this was or was not included. All that we have to see is, how much after the cession of the southern territory to the United States, of what was left of the Province of Quebec was within Civil Government. Well, we find it was within Civil Government to the Lake of the Woods. Whether Upper Canada went beyond that to the utmost extent of what was known as Canada, is, for the purpose of the present investigation, entirely immaterial.

*By Mr. Ross :*

406. By the treaty ceding certain possessions, which were British possessions to the United States, was not Red Lake fixed as an objective point on the west? No; in the discussions between the English and the French plenipotentiaries as to the western limit of Canada, the western extension, as drawn on the map which the Marquis de Vaudreuil handed to General Amherst, was carried to Red Lake, which was practically the line of the Lake of the Woods.

*By the Chairman :*

407. Was bounded by the Illinois country which lay to the west of the line and was not a part of Canada?—It is immaterial as to that, because, when we show that the French themselves admitted that a certain westerly portion of their territory was in the meridian line of the Lake of the Woods, you have there your starting point, the key, in a great measure, to the whole question. Then, when you come to the next fact, that the Crown, after the cession of the southern territory, in defining the jurisdiction of the Quebec Act, or in describing the extent of the jurisdiction of the Governor under that Act, showed, that the new limit was the Lake of the Woods, you have there the second stage, which puts it beyond question that the western limit then was clearly to the Lake of the Woods, where the Arbitrators have now fixed it.

*By Mr. Ross :*

408. You are aware that in disputes between the different States as to what would be considered their boundaries, in every case, large natural dividing lines, or large natural divisions, such as rivers and mountains would, show them?—The rule laid down is this: that in great questions which concern the boundaries of States, where great natural boundaries are established in general terms, with a view to public convenience, the great object, where it can be distinctly perceived, shall not be defeated by technical perplexities in regard to lines, which may sometimes influence contracts between individuals. This rule is taken from one of the judgments of the Supreme Court of the United States.

409. In the light of that decision, it would be natural to use the term northward along the banks of the Mississippi?—Certainly, and when you have the unmistakeable fact that the object of the Government was to bring under Civil Government the settlements of the former subjects of France, which the effect of a due north line would be to leave out.

*By the Chairman :*

410. Illinois was not a part of Canada at that time?—It had been previously brought within the Government of Canada; and was ceded as part of Canada in 1763

*By Mr. DeCosmos :*

411. Where is the decision referred to?—I think it is in the 5th volume of Wheaton's Reports.

*By Mr. Weldon :*

412. Might not the word "northward" in the Act apply more to the location than the running of the line?—I think that would be a proper interpretation.

*By the Chairman :*

413. Another question I want to ask you is this: Up to 1838 commissions to Governors are as follows: "And whereas, we have thought fit by Our Order, made in Our Privy Council, on the nineteenth day of August, one thousand seven hundred and ninety-one, to divide Our said Province of Quebec into two separate provinces, to be called the Province of Upper Canada and the Province of Lower Canada, by a line to commence at a stone boundary on the north bank of the Lake St. Francis at the Cove west of the Pointe au Baudet, in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit to the direction of north thirty-four degrees west to the westernmost angle of the said Seigneurie of New Longueuil; thence along the north western boundary of the Seigneurie of Vaudreuil, running north twenty-five degrees east, until it strikes the Ottawas River, to ascend the said river into the Lake Temiscaming, and from the head of the said Lake by a line drawn due north until it strikes the boundary line of Hudson's Bay; the Province of Upper Canada to comprehend all such lands, territories and islands, lying to the westward of the said line of division, as were part of our said Province of Quebec, and the Province of Lower Canada to comprehend all such lands, territories and islands lying to the eastward of the said line of division, as were part of our said Province of Quebec." In 1838, the wording of the commission was altered in this way: After describing the line of division as in the former commissions, it goes on to say, "being bounded on the south, beginning at the said stone boundary between Lancaster and Longueuil, by the Lake St. Francis, the River St. Lawrence, the Lake of the Thousand Islands, Lake Ontario, the River Niagara, which falls into Lake Erie, and along the St. Clair, Lake Huron, the west shore of Drummond Island, that of St. Joseph and Sugar Island, thence into Lake Superior." Now, we had evidence, the other day that simultaneously with this alteration in the commission there was a colony formed in Assiniboia. Lord Selkirk's settlement was formed into a *de facto* colony, as the evidence goes, under the Hudson's Bay Company, and recognized by the Imperial Government. That colony had well defined boundaries, and is it not probable that this alteration in the description of the western boundary of Upper Canada had some connection with that of the eastern boundary of the colony of Assiniboia. Do you know whether that subject, or whether the fact of troops having been sent to the colony of Assiniboia—or its recognition by the Imperial



Government—was brought to the notice of the Arbitrators when they were considering this matter of the boundaries?—That is outside of the territory they have awarded.

414. It was not brought to their notice?—The Book of Documents on the boundaries will show whether it was or not. I have not retained so clear a recollection of matters affecting the territory outside of the limits, as I have of those within the limits.

415. *The Chairman*.—This territory of Assiniboia with its well-recognised boundaries was not beyond the boundaries of the award. As described and as explained by its late Governors, it came far east of that, and the award runs far into the territory of that colony.

416. *Witness*.—You must remember you are now coming to modern times. I have been speaking of 1791, and at that time the Hudson's Bay Company had not made any settlements under their charter, within the territory of Assiniboia. There was no civil government there, but whatever colonies the Company established in Assiniboia, must be held to be subject to what was the Crown's right in regard to the territory which was included within the Quebec Act of 1774, and the Crown's proclamation of 1791; and if the Hudson's Bay Company intruded thereafter in that territory, unless the Crown withdrew the proclamation of 1791, the Company's intrusion there would give no rights of government to the Company.

*By Mr. Ouimet* :

417. Do you know of the existence of that Colony of Assiniboia?—Yes : Lord Selkirk's colony.

418. This colony was a regular Crown colony?—No, it was not.

419. You do not admit it was?—No; it was a local establishment of the Hudson's Bay Company—the Crown had nothing to do with it.

420. *The Chairman*.—It was first Lord Selkirk's colony. In 1838 it was adopted by the Hudson's Bay Company, and then it was treated, in some measure, as a Crown colony?—

421. *Witness*.—In connection with the last question, I must say there was a Crown colony established by the Crown in Assiniboia.

*By Mr. Ouimet* :

422. Are you aware it was recognized as a Crown Colony, and that Records were appointed, having civil and criminal jurisdiction, under commissions issued by the Crown of England?—Recorders were appointed under commissions issued by the Hudson's Bay Company.

423. *The Chairman*.—Yes, under their charter from the Crown of England, they claim.

424. *Witness*.—The Crown appointed no officers with civil or criminal jurisdiction in Assiniboia.

*By Mr. Ouimet* :

425. But the power of the Hudson's Bay Company to appoint these Records was recognized by the Crown?—That is a question. There is a dispute as to whether the Crown recognized the validity of the charter, and the Crown, therefore, in no way committed itself, because in the Act extending the Hudson's Bay Company's license to trade, Parliament specially reserved the rights of the Crown.

*By Mr. DeCosmos* :

426. Do you know what the boundaries of the Colony of Assiniboia were?

The witness, in reply, pointed out the boundaries on the map.

427. Was it the Hudson's Bay Company made this grant to Lord Selkirk or the North-West Company?—It was the North-West Company, in the first instance, but Lord Selkirk sold the North-West Company to the Hudson's Bay Company.

428. Are you aware whether there was any deed of surrender that passed from the North-West Company to Lord Selkirk?—Well, these are matters of private bargain between Lord Selkirk and the others, of which I have no clear recollection. I remember reading that there were some documents passed, but what their nature was, I cannot say.

429. Where may those documents be found?—I cannot say.

430. In the possession of the Dominion Government?—I could not say. They are simply a transfer of private territorial rights, which the Crown in no way mentioned.

431. *The Chairman*:—They are published in the Canadian Pamphleteer in the library.

432. *Witness*:—But these documents were matters of private concern, which could in no way bind the Crown.

*By Mr Ouimet*:

433. What would you consider that the Crown would be bound by?—By Acts of Parliament or by Orders in Council, or by proclamations issued under Orders in Council and grants under the Great Seal.

434. Suppose the Government of England made an agreement with the Hudson's Bay Company; that agreement would be sanctioned by Order in Council declaring the powers vested in the Company with regard to the government of their territory. Would you consider it binding on the Government?—It would, according to the terms of the patent, provided it was an agreement within the power of the Crown to make, and you will find in most of those patents the Crown reserves to itself that it shall have, during the pleasure of the Crown, the right to withdraw, in the exercise of its pleasure, the grant, or modify it as circumstances may require.

*By Mr. DeCosmos*:

435. Are you aware whether there was any such proviso in the charter granted to the Company?—The printed charter will show it.

436. Has it not been maintained that that was a perpetual grant?—Yes; but it has been maintained that it was an invalid grant, that it was *ultra vires* of the Crown to issue it, and I think the opinions of the greatest lawyers of England are in favor of this view. The grant was indefinite as to territory, and where such grants are indefinite as to territory the public right must, consistently with justice to the private grantee, dominate. It was also held to be *ultra vires*, because it gave to subjects the rights of Sovereignty without process of law, and without the responsibility to the public, which, in ordinary constitutional governments, has ever been held to be essential.

*By the Chairman*:

437. Would you not attach as much importance to instructions issued to Governors 45 years ago as to instructions to Governors issued 90 years ago?—I would today give the same effect to instructions to Governors as should have been given 90 or 45 years ago; but, as I said before, these instructions are intended to regulate the personal and public conduct of the Governor in his administration of the Government of the Colony or the Province over which he is appointed.

438. But Mr. Mills, whose statements are in these books, has expressed a very different view. He says that the Government may, by instructions to Governors, extend or diminish the boundaries of a Province?—So they can, for the purpose simply of a Crown Government, that is the simple Government by an officer, where the Crown officer is the legislator, judge and executive. He then exercises three Departments of Government: the Executive, Legislative, and Judicial. Where he is the sole officer, there the instructions of the Crown can make him the Crown officer for such purposes as would be necessary in regard to that territory, that is, for Government by the other two Departments (the Legislative and the Judicial), in addition to that (the Executive) which pertains of right to the Crown.

439. You say that the proclamation of 1791 has never been cancelled. There was a proclamation issued in 1763, which also, I think, has never been cancelled?—Oh yes, it was. I will read a passage from it: "And that it is further declared to be our Royal will and pleasure for the present, as aforesaid, to reserve under our Sovereign protection and domain, for the use of the Indians, all the lands and territories not included within the limits of our said three new Governments, or within the limits of the territory granted to the Hudson Bay Company, as also all the lands and terri-



"terries lying to the westward of the sources of the rivers which fall into the sea from the west and north-west as aforesaid; and we do hereby strictly forbid on pain of our displeasure, all our loving subjects from making any purchases, or settlements, what-ever, or taking possession of any of the lands above reserved without our special leave and license for that purpose first obtained." That reservation is a reservation of the Indian territories and of other territories not brought within civil Government, and was partly cancelled in 1774 and 1791. In arguing the matter before the Arbitrators, we called their attention specially to the fact that in the documents there were these reservations and that they effected portions of the three territories mentioned, the Indian territories, the Hudson's Bay Company's, and territories known by the name of Canada, or New France.

*By Mr. Trow :*

440. Did you describe them?—As far as we could. These territories to which I have just referred, come within the definition, as I understand it, of Indian territories.

441. *The Chairman* :—Precisely so.

442. *Witness, continuing* :—Because that proclamation says : "We further declare it to be our Royal will and pleasure, to receive under our authority and protection and dominion, for the use of the said Indians, all the lands and territories not included within the limits of our said three new Governments, or within the limits of the territory granted to the Hudson's Bay Company, as also all the lands and territories lying to the westward of the sources of the rivers which fall into the sea from the west and north-west as aforesaid." The same proclamation, in other paragraphs, describes them as lands lying to the westward of the sources of the rivers which fall into the sea from the west and north-west. That clearly includes Indian territories. It must be remembered that, at that time, some of the documents would seem to infer that the St. Lawrence system of rivers was connected with Lake Winnipeg and Lake Manitoba.

443. *The Chairman* :—Not at all.

444. *Witness* :—You will find that in the Ontario documents. I can give you the reference just now. The supposition was that this river system was united between the Lake of the Woods and Lake Winnipeg.

*By Mr. DeCosmos :*

445. What is the date of that assumption?—Somewhere about the early French times.

*By the Chairman :*

446. It does not appear in that map of 1755?—In some maps it appears; in others, not.

447. In connection with that the Act of 1803 was passed to provide means to maintain order in the territory beyond the bounds of the Provinces, but adjoining them?—I can explain that. As I said before, this proclamation of 1763 reserved to the Crown the Indian territories. Then came the Act of 1803, which was passed in consequence of crimes committed in those Indian territories. This Act extended the jurisdiction of the Courts of Upper and Lower Canada "over crimes and offences committed in the Indian territories and other parts of America not within the limits of the Provinces of Upper and Lower Canada, or of the jurisdiction of any of the courts established in those Provinces, or within the limits of any civil government of the United States." There was no defined locality given to those Territories by the Act, nor by any of the State papers relating to North America, but you will find in Lord Selkirk's sketch of the British fur trade in North America, which was published some time after that, his statement of the disturbances which led to the Act, and of the locality where those disturbances took place; and he says, (pages 85-6) speaking of the Act:—"This vague term, 'Indian Territories,' has been used without any definition to point out the particular territories to which the Act is meant to apply." There are, however, extensive tracts of country to which the provisions of the Act unquestionably do apply, viz:—those which lie to the north and west of the Hudson's Bay Territories, and which are known in Canada by the general name of "Arthabasca." It was here that the violences, which gave occasion to the Act, were

"committed; and these are the only districts in which a total defect of jurisdiction, described in the preamble of the Act, was to be found."

*By Mr. Ross:*

448. Do you understand the term "Indian territories" to mean those territories lying in the region of Lake Athabasca?—As I understand them, the territories are as we call them on the map, Athabaskan and Chipewyan territories.

*By the Chairman:*

449. That was the contention sought to be put upon the Act by the Hudson's Bay Company, because they wanted to shove the Indian territories away beyond the watershed, both of the Saskatchewan and the St. Lawrence. Now you have taken the same ground; but the Act was passed to provide, as follows: "Whereas crimes have been committed in the Indian territories and other parts of America," &c. I think that wherever the disturbed territory was, would be likely to be the territory in which it was necessary to provide for the maintenance of order. It could not have been meant to provide jurisdiction for a country so very far away, and I think Athabaska was not better known in those days than the sources of the Nile. We find it stated in Mackenzie's travels that there had been murders committed, and that there was a great deal of anarchy after the inauguration of the North-West Company of Canada, between 1763 and 1800, on the Assiniboine and waters flowing down to Red River. We had it also from Mr. Smith in evidence the other day, that towards the sources of the Albany and Moose Rivers, Hudson's Bay Company's officers had been murdered, that is just beyond the watershed of the St. Lawrence. Would it not be natural to suppose that that was the country meant?—Well, Lord Selkirk was a man who was familiar, both as a public man in England, and as one understanding the country there, with the localities which he described, and the crimes committed which led to the passing of the Act of 1803, and he in his book, says it was here the violences which give rise to the Act were committed. He gives also a detailed account of those crimes.

*By Mr. Ross:*

450. In what place does he say they were committed?—In Athabaska. I should prefer to take the opinion of Lord Selkirk on a matter of that kind than that of any other writer, from his intimate knowledge of the circumstances which gave rise to that Act. As a public man in England, he would know the occasions which led to it, and as a man familiar with the events would be able to affirm the fact.

*By Mr. DeCosmos:*

451. And be probably as much biassed as the Hudson's Bay Company?—It was a simple question of fact as to where the disturbances occurred.

*By the Chairman:*

452. Lower Canada in those days had superior jurisdiction to Upper Canada in all these matters?—Yes, it was provided that the jurisdiction should be in Lower Canada, unless the Governor saw fit to transfer the trials to Upper Canada.

453. But a Commissioner, after the trouble of 1814, was sent up there to enquire into all the disturbances?—There were several investigations, not by one Commissioner but by more than one.

454. Did these Commissioners go to the Athabaska country or merely to Fort William and Red River?—I could not say.

*By Mr. Royal:*

455. The Mississippi is a great factor in deciding the Imperial limits of the Province of Quebec at that time. Was the Mississippi the well-known river of to-day, at the time the Act was passed? Was it not then considered in 1763 and 1783, a little more to the west?—It was well known by name to the travellers who had been there; to the French settlers there, and the French officers who were in command of posts there, its locality was known; but I imagine the Departmental officers of the French Government, and the Departmental officers of the English Government, had at that time, very hazy ideas of localities on this continent.

456. Is not the opinion that gives the Rocky Mountains as the western limits of Ontario, more in accordance with what was known then as the Mississippi River; and



is not that more logical and more in consonance with your own idea that it must have been the object of the proclamation to embrace as many people as possible under the sway of the Government?—That idea as to the Rocky Mountains, in later discussions of the question, originated, in a great measure, in the Report of Mr. Cauchon, Commissioner of Crown Lands in 1857. In the evidence which was given before the Committee of the Legislative Assembly notably, I think, the evidence of Mr. Wm. McD. Dawson, and of several others, and in the evidence which was brought before the House of Commons the same year, that claim was set forth. It was also the claim of Sir George Cartier and Mr. Macdougall; in fact they claimed to the Pacific coast in their contest with the British Government on behalf of the Dominion of Canada in 1869; but Chief Justice Draper, than whom you could not find a more able man as a judge in deducing from facts and documents, a clear conclusion both as to fact and law, came to the conclusion that whatever might have been the claims put forward, on behalf of Canada, there was a clear right to Canada in the west, to the line of the Mississippi.

*By Mr. Ross :*

457. Do you mean the actual Mississippi?—Yes.

*By Mr. Royal :*

458. What makes you believe that the Mississippi, as we know it, was the Mississippi known then? Why do you select the present Mississippi and leave out the only Mississippi then known?—I think, as a lawyer, it is not what the Crown officers supposed in regard to boundaries that should govern, but where those boundaries actually were; and the suppositions of either individuals or state officers would not in any way control the fact. Whether they believed the locality was westward or eastward of its actual position would not be of any weight. The law says where the described boundary is, that must govern.

*By the Chairman :*

459. Here is the map produced by the Hudson's Bay Company showing their territories coming up to the summit of the St. Lawrence water-shed. This map was exhibited before a Committee of the House of Commons in England in 1857. And here is an Act called the "Rupert's Land Act" passed in 1868, by the Imperial Parliament, and it contains the following :

"And whereas, for the purpose of carrying into effect the provisions of the said British North America Act, (1867), and of admitting Rupert's Land into the said Dominion as aforesaid, upon such terms as Her Majesty thinks fit to approve, it is expedient that the said lands, territories, rights, privileges, liberties, franchises, powers and authorities, so far as the same have been lawfully granted to the said Company, should be surrendered to Her Majesty, her heirs and successors, upon such terms and conditions as may be agreed upon by and between Her Majesty and the said Governor and Company as hereinafter mentioned.

"Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords, Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

"1. This Act may be cited as "Rupert's Land Act, 1868."

"2. For the purpose of this Act, the term "*Rupert's Land*" shall include the whole of the lands and territories held, or claimed to be held, by the said Governor and Company."

Here is an unequivocal recognition of territorial rights. The Government of Canada purchased from the Hudson's Bay Company the whole of their rights and territories, paying them a million and a half of dollars, and giving them besides the one-twentieth part of the land within the fertile belt. Ontario as an integral portion of the Dominion, was a party to these negotiations, and she purchased, along with the rest of the Dominion, the territory claimed or owned by the Hudson's Bay Company and mentioned in this Act. Was she not a party to the transaction? Did she not admit the claim?—I assume she made the purchase, as part of the Dominion. How far the Provincial rights were represented, I cannot say.

460. There is another question with regard to this due north line from the head of Lake Temiscaming. The description in the instructions to Governors says, "due

"north from the head of Lake Temiscaming until it strikes the boundary line of "Hudson's Bay." Now, Mr. Mills, in the concluding part of his report, gives two lines, one passing here, as it were, towards the height of land, and one intermediate between it and the shore. He gives the intermediate one as the right one, in his published work. Do you consider the boundary line of Hudson's to be identical with the shore?—I consider the words "line" and "shore" identical.

461. Then the Hudson's Bay Company had no territory at all, even on the shores of the Bay?—In 1713 they had no territory on the south shore that they could claim as their own.

462. At the south shore of the Bay?—They had, as it has been already said, a few fringes of settlements scattered here and there. They had remained there for 60 years, and had never gone inland, while the French had pushed their settlements inward and obtained cession of the territory to the shores of the Bay from the Indians.

463. You speak of a date previous to the Treaty of Utrecht. My question referred to the period after that treaty?—You must remember the state of affairs before the treaty in order to come to a conclusion as to what the treaty operated upon, because the treaty did not surrender any part of Canada, but simply "restored" to England what had been England's before that. You will find the French were very exact in claiming they had never surrendered to England any part of New France; all they had surrendered were the Bay and Straits of Hudson. Prior to the English claim of territory, the French had obtained the surrender from the Indians and had taken full possession, according to the manner of taking possession then, of the territory to the shore of Hudson's Bay; and the King of France, under his own hand, declared that this territory had been taken possession of in his name prior to the English occupation, and that it was part of Canada. The whole contest between the French and the English, at that time, was as to the possessions on the shore. The Treaty of Utrecht, in express words, restored to England the Bay and Straits of Hudson, and did not cede any part of Canada, or New France.

464. The treaty states:—"The Bay and Straits of Hudson, together with all lands, "seas, sea coasts, rivers and places situate in the said Bay and Straits, and which "belong thereto, no tracts of land or of sea being excepted, which are at present "possessed by the subjects of France."—The key to that treaty is the word "restore." There can be nothing detrimental in it beyond the meaning of that word. Then Commissioners were appointed to fix the limits between the said Bay of Hudson and the places appertaining to the French, which limits the British and French Commissioners never defined, and thereby arose all the difficulty. The treaty gave to the French the right to the shores in those words: It is, however, provided "that it may be entirely free for the Company of Quebec and all other subjects of "the most Christian King whatsoever; to go by land or sea, whithersoever they please "out of the lands of the said Bay, together with all their goods, merchandizes, arms "and effects," except munitions of war.

465. *The Chairman.*—They were to evacuate the country, in fact.

466. *Witness, continuing.*—Then the British Commissioners, inspired by the Hudson's Bay Company, claimed to line 49. It must be remembered that before that treaty, in 1700, the Hudson's Bay Company and the British admitted that the French were entitled to this south shore, and that the line of division should be from the Main river to the Albany River, which is now, by the award, the northern boundary of Ontario. In the following year, 1701, they suggested that from this territory which had been ceded to the French by the Indians, a line should run across to Albany River, and that all south of that line should belong to the French. These Commissioners were to determine where that line should be. The English claimed to line 49; the French claimed to the shore.

467. *The Chairman.*—That was previous to the Treaty of Utrecht?—No; I am now speaking of the negotiations that took place in regard to the claim of boundaries under the Treaty of Utrecht. The memoir of M. D'Auteuil respecting the limits of Hudson's Bay, 1719-20, states, "That it is well to remark that the English, in all the



“places of the said Bay and Straits which they have occupied, have always stopped at the border of the sea, carrying on trade with the savages who went there to find them, whilst the French, from the foundation of the Colony of Canada, have not ceased to traverse all the lands and rivers bordering on the said Bay, taking possession of all the places, and founding everywhere posts and missions.” The French therefore claimed ownership of these territories by prior possession and occupation. The memoir further states: “They (the English) cannot say that any land or river or lake, belongs to Hudson’s Bay; because, of all the rivers which empty into this Bay, or which communicate with it, belongs to it, it might be said that all New France belonged to them, the Saguenay and St. Lawrence communicating with the Bay by the Lakes.” He thought that Lake Winnipeg and the St. Lawrence did connect together, and as Lake Winnipeg flowed into Hudson’s Bay, the English might, under their pretension, claim New France. He calls attention to the very remarkable fact that this proposition from the English was never signed, whether it was the intention of the Crown not to commit itself absolutely to the demands of the Hudson’s Bay Company, or reserve them that they might be the subject of future negotiations with the Company, was not apparent.

468. Can you point to any instance where the French returned to occupy the Bay after the Treaty of Utrecht?—Yes, as you will find in the statements of the Hudson’s Bay Company, the French, after the treaty of Utrecht, built a fort on the Albany River, and the Hudson’s Bay Company called attention to that. The French claimed a right to the shores of the Bay and consequently built this fort.

469. *The Chairman*:—You differ from other authorities, all of whom admit that subsequent to the Treaty of Utrecht, the Hudson’s Bay Company were in undisputed possession on the confines of the Bay.

470. *Witness*:—The Company’s statement as to that is on page 368 of the documents, and the French statement is on pages 370 and 368.

471. How would the French claim effect the subsequent proceedings?—The legal effect of the French claims would seem to be this: prior to the cession of Canada the French King asserted a possession and sovereignty up to the shores of the Bay. When the cession of 1763 was made, the French king surrendered his sovereignty and his claim to possession—his sovereignty which was *de facto* and his claim to possession which might be *de jure*—to the Crown of England, which, thereupon, became clothed with the double sovereignty of the Crown of England and the Crown of France. The first exercise of that sovereignty over this territory was the proclamation of 1791, which ran the line up to the shores of Hudson’s Bay.

472. *The Chairman*:—That is rather a far-fetched interpretation. Before and after the cession on all the maps there is a boundary line drawn inland from the shore of Hudson’s Bay.

473. *Witness*:—I was only considering the judicial interpretation, taking the view expressed by Lord Justice James on a similar point in a late case affecting succession to the rights of a displaced power. He says: “I apprehend it to be the clear, public, universal law, that any Government which *de facto* succeeds to any other Government, whether by revolution or restoration, conquest or reconquest, succeeds to all the public property, to everything in the nature of public property, and to all rights in respect of the public property of the displaced power,—whatever may be the nature or origin of the title of such displaced power.” But this right is the right of succession, is the right of representation; it is a right not paramount but derived, I will not say under, but through the suppressed and displaced authority, and can only be enforced in the same way, and to the same extent, and subject to the same correlative obligations and rights, as if that authority had not been suppressed and displaced, and was itself seeking to enforce it.” I am now speaking of the judicial interpretation of a succession to sovereign rights as I have referred to as the prerogative interpretation of the term “boundary line.”

*By Mr. Royal :*

474. The question is, after all, whether you consider the words "shore" and "boundary line" identical?—They are identical. The word "shore" would have been a more appropriate word than "line."

In answer to Mr. Ross :—

475. *Witness* :—The treaty used the word "restore." The reason why I say that France could not be held to have surrendered any of her territory is that according to the rule which is recognized as a rule of international law, where one country cedes to the other, the treaty shall be read most favorable for the ceding power. In a case of a similar nature, the Supreme Court of the United States laid down that rule in favor of the Spanish version of a treaty as against the American version.

476. *The Chairman*.—But the Treaty of Utrecht admits of no doubt with reference to the territory restored which is therein described as embracing "all land, seas, sea coasts, rivers and places situated in the said Bay and straits, and which belong thereunto; no tracts of land or of sea being excepted which are at present possessed by the subjects of France." Surely that is clear enough. Further on the treaty says: "It is agreed on both sides to determine within a year by Commissioners to be forthwith named by each party, the limits which are to be fixed between the said Bay of Hudson and the places appertaining to the French." Surely that indicated a line somewhere inland from the shore of the Bay.

477. *Witness* :—The question is, how did the French interpret that? Lamothe Cadellac, a French officer, in 1720, states as follows: "Lamothe has examined the 10th article of the Treaty of Utrecht, and has remarked that there can be no contestation upon the word 'restituera' (shall restore), because it is certain that where there has been no unjust possession there is no place for restitution.

"The English have never possessed the lands that the French have at Hudson's Bay, therefore it is impossible for the King of France to restore them to them, for one cannot restore more than that which has been taken by usurpation.

"The fact is, that at the time of the said Treaty of Utrecht, the French possessed one part of the Strait and Bay of Hudson, and the English possessed the other. It is very true that the King of France had, some time before, conquered the English part, and it [is] of this that it has been understood that restitution is to be made, that is to say, to trouble them no more in their enjoyment; but with regard to the said lands possessed by the French in the said Bay, if they have previously belonged to the English, the King will bind himself in the same manner, to make restitution of them. But there must be a real and incontestible proof of proprietorship; and this the Crown of England cannot produce."

*By the Chairman :*

478. The English insisted on the word "restore," while the French stood out for the word "cede." Finally the word "restore" was used in the treaty, because the English claimed all, and would not admit that the French had any rights, territorial or otherwise, in that section to cede. The question which the Committee has to consider is, whether subsequent to the Treaty of Utrecht, 1713, the Hudson's Bay Company were seriously disturbed in their possession, or driven from the territories which they held, on the immediate confines of the Bay. And from all we have so far learned, they evidently were not?—The French gave a different interpretation to the treaty, and still claimed that from "Margaret's River, which runs into the River of Canada, or the St. Lawrence to Rupert's River, at the bottom of Hudson's Bay, was part of New France; and that they made the first settlements at the Bay to the north of Canada."

*By Mr. Ross :*

479. If you could prove the French possessions by treaties with the Indians, you would know how much they owned?—Yes.

480. Have you copies of the treaties with the Indians in which they surrender their rights, to the French, and describe the lands surrendered?—They are referred to on pages 345 and 348, and pages 61 and 62 of the Book of Documents, 104.



*By the Chairman :*

481. All these were previous to the Treaty of Utrecht. Yes, about 1670 and 1672.

SATURDAY, 3rd April, 1880.

The Committee met at 11 o'clock ; MR. DAWSON in the chair.

Honorable JOHN DOUGLAS ARMOUR, Judge of the Court of Queens Bench, Ontario, was examined, as follows :—

*By the Chairman :*

482. I believe you are acquainted with this case of the boundaries?—I was retained as counsel to argue the case on behalf of the Dominion Government.

483. By the Dominion Government?—Yes ; in December, 1874, I was to have argued it, had it been practicable to have a meeting of the Arbitrators before I went on the bench which was in December, 1877.

484. Were you furnished with all the necessary documents?—I was furnished with Mr. Mills work, Judge Ramsay's report, Mr. Lindsay's report, and such other evidence as from time to time I required, by the Government. A good many documents which I thought might be necessary, and for which I asked, could not be found ; but all the evidence attainable here, I think I saw.

*By Mr. Trow :*

485. You never completed your researches in reference to this?—Yes, I did. I was prepared to argue the case if the meeting of Arbitrators had been held, but the first Arbitrators appointed were, Chief Justice Richards and Mr. Wilmot, and a third was to have been appointed. Chief Justice Richards resigned, Mr. Wilmot died, other arrangements had to be made, and the matter was delayed from time to time. There was also some delay on the part of Ontario, then on the part of the Dominion. When I was retained in 1874, it was understood the Arbitrators were to meet in March following.

486. You never appeared before the Arbitrators?—No, because they never had a meeting until after I was appointed to the bench.

487. Did you give all the information you had to any of those who did appear before the Arbitrators?—Well, I met Mr. McMahon, who succeeded me as counsel for the Dominion, and had a long conversation with him one night. I gave him an epitome of my views. He asked me if I would dictate it to a shorthand reporter. I did so subsequently. The statement was an imperfect one given late at night after my judicial duties were over for the day. I have it here. It would, of course, require revision and a good deal would have to be added, owing to new contentions which have arisen, and changes which have taken place.

*By Mr. Ross :*

488. You would consider this tolerably near your opinion?—It is just general instructions to a new Counsel in order to put him on the track of what the contention was. I also gave him references to various books where he would find the law on the subject, bearing on the different points in dispute.

*By Mr. Trow :*

489-490. Would it not be better for Judge Armour to give his views in a concise manner before the Committee prior to any member of the Committee questioning him on the subject. *Mr. Justice Armour :*—Perhaps I may as well read my statement :—

STATEMENT BY MR. JUSTICE ARMOUR ON THE QUESTION OF THE BOUNDARY BETWEEN ONTARIO AND THE DOMINION.

In my view the boundary of Ontario is to be one of these three, namely :—

1st. The height of land which goes all round both north and west, and forms a northern and western boundary.

2nd. The height of land where it is intersected by a line drawn due north from the junction of the Ohio and Mississippi.

3rd. Where such a line would strike the 49th degree of north latitude.

These different boundaries are to be determined: First, by consideration of the Charter granted to the Hudson's Bay Company and of the construction of that Charter, and of the International Law of the date of that Charter, viewed as applicable to the Charter; next, by the Treaty of Utrecht; next, by the Quebec Act of 1774; and lastly, by the Rupert's Land Act of 1869.

Whatever England had on Hudson's Bay she intended to grant to the Hudson's Bay Company; and by the construction of the Charter, as viewed at that time, she purported to convey to them, not only the coasts and straits, but the rivers, which, according to the view of International Law held at that time, would convey all the lands drained by those rivers. Thus, the intention in granting the Charter was to grant all the lands drained by streams flowing into Hudson's Bay; in effect, making the southern boundary of the grant to the Hudson's Bay Company the height of land. England was the first discoverer of the Hudson's Bay; and as between her and France, she was clearly entitled by discovery to the Hudson's Bay. No French ship, from the time of the discovery of Hudson's Bay, had ever entered Hudson's Straits for more than seventy years after its discovery. It is said that one Jean Bourdon, in 1656, entered Hudson's Straits; but this is shown to be untrue by the Relations of the Jesuits, which speaks of his ship returning, having gone as high as the 55th parallel, I think. The Jesuits would have known if Jean Bourdon had entered the Straits of Hudson, and would have mentioned it in their relations. On the contrary, they do not mention it; and it is to be taken from that that the assertion that he ever entered the Straits is a myth; because he was of the Province of Quebec, was a man well known and trusted by the Jesuits, intimate with them, and afterwards went with Isaac Joques on an embassy to Governor Dongan of New York. Then the Charter was granted in 1670. Up to that time the French had not gone overland to Hudson's Bay. The first overland journey was in 1671, undertaken by Albenel and Simon, who went up the Saguenay to the St. John's, thence to Lake Mistassiné, and thence by the river flowing from that lake to Hudson's Bay. In the Jesuit relation of Albenel he gives an account of his trip, and shows in that that the English Company were already in possession of the Hudson Bay; having entered it under their Charter. So that it is clear that no possession had ever been taken by the French of the Hudson Bay coasts until Albenel assumed to take possession of them in the name of the King of France in 1671, at which time the Hudson's Bay Company had already under their Charter settled upon the coasts. Now, where a settlement is made upon a sea coast at the mouth of a river, in the view of International Law, the settlers were entitled to claim the land drained by that river. This was the view the French themselves entertained; and in that they were willing to allow to the English colonies of the Atlantic coast, who settled there under Charters, the right to all the territory drained by the waters flowing into the Atlantic Ocean, but claimed that the English settlements were bounded on the west by the Alleghany Range, and that they being the first discoverers of the Mississippi, were entitled to all the land drained by the affluents of the Mississippi, from the Alleghany westward,

Shortly after 1670, the fur companies, which in effect governed Canada at that time, or in which the Government was vested finding that the English Settlers on Hudsons Bay were drawing trade in that direction determined to expel the English from Hudson Bay, and from 1680 to 1690 the French had despatched Iberville with ships to Hudsons Bay to take possession of the Forts held by the English there, and had sent overland an expedition for the like purpose; the result of which expeditions in the end was that the French became possessed of all the Forts of the Hudson Bay Company, on Hudson Bay, with one exception.

When the Treaty of Utrecht was consummated in 1713, it was part of that treaty that the French should restore to the English all the Hudson's Bay Territories; and in the wording of the 10th Article of that Treaty a great deal of discussion arose as to whether the word "restore" or the word "cede" should be used; that is, whether



the French should restore to Great Britain the Hudson Bay Territories, or whether she should cede them to Great Britain; Great Britain contending that inasmuch as she was entitled to them originally and the French had dispossessed her of them, that the French should restore; while the French desired to use the word "cede" as if the territories had belonged to the French and they were for the first time ceding them to Great Britain. The word "restore" is used in the 10th Article of that Treaty; and it is of importance to examine the original text of the treaty which is in Latin. The words used in that article, "*spectantibus ad eadem*" show clearly that France was, in fact, to restore to England all the lands looking towards Hudson's Bay; in other words, the whole water-shed of the waters running into Hudson's Bay. That article of the Treaty I look upon as being most important in showing the legal beginning, by agreement, of the boundary between the Hudson's Bay Territory and the French settlements; and I know of no act done by the French, of no legal taking possession of any territory either under treaty or under law, which would have the effect of in any way derogating from the boundary in effect established by that article of the Treaty of Utrecht. It is true that in the negotiation of that treaty, it was stipulated that Commissioners should be appointed by each government to establish the boundary between the territory of each, but that I take to mean to define what would be the true boundary according to the interpretation which I have already stated the Treaty of Utrecht must be held to bear; that in making the height of land the boundary between the two territories. This appears to be so also from the fact that, in 1725, Louis XV. writes to the Governor at Quebec with reference to a dispute which had arisen about the Post of Temiscaming, directing that the Post of Temiscaming should consist of that part of the country drained by the waters flowing into the River St. Lawrence; showing clearly that, according to the view the French then held, they were bounded on the north by the height of land. The Commissioners to be appointed under the Treaty of Utrecht have never settled the boundary, so far as can be ascertained. But the Hudson Bay Company, on being asked by the British Government to furnish what they considered ought to be the boundary between them and the French, furnished a map to the British Government, claiming that the boundary should commence at Cape Perdrix, on the Atlantic coast, thence south-westwardly to Lake Mistassiné, thence south-westwardly to the 49th parallel, and thence indefinitely along the 49th parallel. It is said that the French claimed to go two degrees further north than the 49th parallel, but it is manifest, in my view, that this was because they thought the height of land north of the 49th parallel, and that they were still acquiescing in the view that the height of land was the boundary between the territories of the respective nations. The 49th parallel in after years was looked upon by the Americans and by the English themselves as being the southern boundary of the Hudson Bay Territory; and we find that, in the discussions which took place in regard to the boundary-line from the north-west angle of the Lake of the Woods to the Rocky Mountains, the United States asserting on the one hand, and Great Britain not denying on the other hand, that the 49th parallel was the boundary between their respective countries because it was the southern boundary of the Hudson Bay Company Territory. And that misconception always obtained on this side of the Atlantic until the investigations that took place with regard to the boundary on the west side of the Rocky Mountains established the fact that the Commissioners appointed by the Treaty of Utrecht had never settled on the 49th parallel, or on any other line. After the Treaty of Paris in 1763, when the Canada of the French was ceded to Great Britain, an Act was passed called the Quebec Act, in the British Parliament, establishing the Province of Quebec, which included what is now Upper and Lower Canada. That Act bounded the Province of Quebec on the west by a line drawn due north from the junction of the Ohio with the Mississippi, and bounded it on the north by the territory granted to the Hudson's Bay Company; the British Parliament at that time recognizing the territorial rights of the Hudson's Bay Company to the fullest extent granted them by their Charter. Shortly after that there was formed, at Montreal, the North-West Company, who taking advantage of the know-

ledge that the French had obtained of the North-West, and employing French voyageurs who had been engaged in the fur trade, went into the western country and established posts, built forts, &c., as far north as Lake Athabaska, carrying on the trade by means of interior posts, the Hudson Bay Company having to that time carried on the trade by means of posts on the sea-coast, so far as we can ascertain. The North-West Company were looked upon by the Hudson Bay Company as intruders, and were intruders; and although it is claimed that they obtained rights by possession, whatever rights they so obtained they afterwards transferred to the Hudson Bay Company when the two Companies were afterwards merged in 1822, I think. So that whatever may be claimed by Ontario as being derivable from the possession of the North-West Company must wholly fail, because the rights of the North-West Company went to the Hudson Bay Company from the time that the two companies coalesced in 1822 down to 1857, or about there. No claim was ever made by the Province of Upper Canada or by the Province of Canada to any part of the territory north or west of the height of land. In 1812 the Hudson Bay Company granted to the Earl of Selkirk a tract of land bounded on the south by the height of land between the Mississippi waters and the Red River waters, and extending eastwardly to the height of land between the waters flowing into the Hudson Bay and the waters flowing into the St. Lawrence. The validity of that grant the British Government in effect recognized by furnishing Lord Selkirk with ordnance stores, and with soldiers to protect him in his rights of property.

The hostility of the North-West Company, however, in the end drove off Lord Selkirk, and created those bloody feuds between the Hudson Bay Company and the North-West Company, which were only settled by their coalescing. Thus we find that in 1812 the Hudson Bay Company conceived that their territory was bounded by the height of land, and we do not find that Canada, from that time to 1857, ever claimed to have any interest there. In 1857 an agitation having been commenced in Canada for the purpose of opening up the trade of the North-West, an attempt was made to have the validity of the Hudson Bay Charter tested. A committee of the House of Commons investigated the matter at that time, and at that committee Canada was represented. The claim that the Hudson Bay then set up was to the height of land; the contention of Canada was in effect that the Hudson Bay Charter was void. The question of submitting the validity of the charter to the Privy Council seems to have been abandoned, ceasing to be pressed by the Canadian Government. In 1869, when the Prince Rupert's Land Act was passed, that Act declared Prince Rupert Land to be all the territory claimed by the Hudson Bay Company, and provided for Rupert's Land coming into the Confederation as such. That was an Act of the Imperial Parliament, passed at the request of the Commons of Canada, of which Ontario was part, and it may be said in that way to have bound Ontario. Any occupation by the French, after the Treaty of Utrecht, of any territory north and west of the height of land, was an occupation by them as intruders only, never legally sanctioned either by treaty or in any other way. It was not an occupation by conquest in time of war, but was a possession against the will of a friendly power then claiming to hold the territory in question, and I see nothing in the occupation by the French for the purposes of the fur trade of any part of that territory, inasmuch as that occupation was only intrusion, to give the French any territorial right beyond that limit, the height of land. After the French, the occupations by the North-West Company, by Lord Selkirk and by the Hudson Bay Company, these three must be looked upon as the occupation of the Hudson Bay Company. Lord Selkirk's occupation was under the Hudson Bay Company; the occupation of the North-West Company was adverse to the Hudson Bay Company, their rights were afterwards merged in the latter company. We find that this occupation by the Hudson Bay Company continued from the time of the Treaty of Paris, without question, down to 1857, and from that time down to the passage of the Rupert's Land Act. During all the time from the Treaty of Paris down to 1857, or shortly before that, no claim whatever is made by Canada to any part of the territory north or west of the height of land, so that not only the Charter of the Hudson Bay Company,



but their possession under it, and the acquiescence, not only of the Home Government, but also of the Canadian Government in their possession, establish clearly their right to all that territory beyond the height of land.

The claim of Ontario to go beyond the height of land is founded on a number of circumstances which, in my opinion, establish no legal right. They claim that Vaudreuil, on his capitulation, ceded to General Amherst all of what was known by the name of Canada; and that inasmuch as all the French territory east of Louisiana and north of the lakes was called Canada, therefore, by the terms of that capitulation, the French gave to the English what was west of the height of land—a territory which the French never had any legal right to, and which the English never accepted as derogating from the territorial rights of the Hudson's Bay Company. Again, stress is laid upon the proclamations issued by the Government; but I do not apprehend that any proclamation could have the effect of depriving the Hudson's Bay Company of what had been granted to them by Charter, that grant having been acquiesced in by the British Government. Commissions granted to Governors of Canada have also been called in to aid the contention that Ontario extends beyond the height of land; one Commission giving a Governor authority to the Mississippi, another Commission giving another Governor authority to the shore of Hudson Bay. These Commissions, being mere instructions to the Governors, could have no effect whatever in altering territorial boundaries. The Commission to Governor Andross of Connecticut gave him authority to the South Sea. It is only necessary to state this to show the absurdity of any territorial right being acquired by any such means.

In the arrangements made with the Hudson's Bay Company for the transfer of territory, the Government directly recognized their right down to the height of land, by allowing them to retain lines of posts all along the height of land; recognizing clearly enough their territorial rights apart altogether from the Rupert Land Act, which, to my mind, puts an end to the whole case.

The maps of those early times are of no use.

This is an imperfect outline of the general view I have formed in regard to the boundary question. It will enable Mr. MacMahon to direct his attention to those points which in my judgment lie at the foundation of the question. This is for his private use only; and I shall be happy at any future period to converse with him on the subject and give him any further information I may be able to afford.

TORONTO, February 23rd, 1878.

That, as you see, was just a general statement delivered by me, *viva voce*, at the time I was appointed Judge.

*By the Chairman :*

491. You are still of the opinion expressed in this document?—Yes; I am still of the opinion that the height of land is the boundary.

*By Mr. Robinson :*

492. On the north as well as the west?—Yes; on the north as well as on the west I refer to the Quebec Act for the reason, it speaks of a line drawn northward, and northward means due north if there is nothing to qualify it in the context. My own view is, that northward was applicable to the territory, and not to a boundary line; that is, that northward was intended to express that the territory then to be erected into the Province of Quebec was to be extended northward to the southern boundary of Hudson's Bay Territory. That is my view. Of course there is legal authority against that in the judgment which has been given.

*By Mr. Ross :*

493. I understand you to say the term "northward" does not mean a meridian line north?—That is my view.

*By Mr. Weldon :*

494. With regard to the line between Hudson's Bay and Ontario?—I hold the height of land must be unquestionably the true boundary, unless Ontario sought to

have it the 49th parallel, which, of course, would hurt Ontario at one point and give her territory at another.

*By Mr. Trow :*

495. Was not the treaty intended to include the French settlements west of the due north line?—I have no doubt it was intended the French should give up all their occupation of the country.

496. You are aware there were several settlements west of the due north line?—Yes, there were what were called “forts,” by the French and by the Hudson’s Bay Co.; but the meaning of the word “forts” must be looked at in the light of the kind of establishments they were. They commenced with wigwams. They had posts at Kaminiistiquia, also at Lake Winnipeg; in fact as high up as the Saskatchewan. Fort Jonquiere, on the forks of the Saskatchewan, was the farthest that the French had. In my view, as soon as Great Britain got the whole of the country back again, she, in fact, implemented her grant to the Hudson’s Bay Co.; because, in the passing of the Quebec Act, in 1774, she bounds the Province of Quebec on the north by the territory granted to the Merchant Adventurers, not by the territory they then held, but by the territory granted, which was a clear recognition of the validity of their grant; and I do not know that the validity of their grant has ever been seriously questioned, except with regard to the monopoly in trade. I do not think it was ever questioned with regard to territorial rights.

*By Mr. Weldon :*

497. Had the French, prior to the Treaty of Ryswick or Utrecht, posts as far as the Albany River?—Yes; they had captured posts on the Hudson’s Bay from the Hudson’s Bay Company, and having taken possession by conquest of parts of the coast on Hudson’s Bay had established posts of their own there.

498. The Treaty of Ryswick was sixteen years before the Treaty of Utrecht?—Yes, in 1697. The French had posts before the Treaty of Utrecht. They had possession of the whole of Hudson Bay, except Fort Albany, I think. There is a good deal said about the fact of the French possession. Mr. Lindsay argues from the use of the word “restore” in the Treaty of Utrecht that the French were only giving back what they had taken from the Hudson’s Bay Company—that they could not restore what they had not taken, and that the Treaty must be construed as limited to what they had taken. His error arises from a misconception of the meaning of the verb “*restituo*” used in the Treaty, which is there used in its literal sense “to establish one in his former position,” and is not properly translated by the word “restore,” as used by us in the sense of “to give back” the latin verb for which would be “*reddo*” and not “*restituo*.” There was a precise and more defined object in the use of the verb “*restituo*” instead of “*cedo*.” The French said: “We shall cede it to you.” The English said: “No, you shall restore it,” and that involved the controversy as to who originally owned the country. Great importance was attached to the word, because in the event of a future war between Great Britain and France, should the fate of arms go against the English, the French would have said: You must restore what we before ceded to you.

*By Mr. Weldon :*

499. According to the Treaty of Ryswick it was only meant to restore the forts, &c.?—I do not think that Treaty really touches the question at all. I think very little was done under it; the state of war continued up to the Treaty of Utrecht.

*By Mr. Ross :*

500. You said that you based the claim of the Hudson Bay Company to the territory north of the height of land on prior discovery by the English?—Yes, on the coast.

501. You are aware the French made frequent voyages into that country, and had made prior settlements even up to the coast of Hudson’s Bay. Did they not go north from Montreal?—I think there is no authority whatever for saying that any white man ever crossed the height of land before the date of the Hudson Bay Company’s Charter.

502. Were there not some voyages made from France direct?—I think not.



503. I notice Mr. Mills says that the French posts on the Bay dated from 1656. The English did not go there till 11 years later?—That is the voyage of Jean Bourdon, and, as I have mentioned, he only went to 55° north latitude. The relations of the Jesuits, on page 9, 1637, speak of him as *Engenieur en Chef et procurer* of New France. On page 9, of the relations, 1658, it is stated that on the 11th August there appeared the barque of Mr. Bourdon, with which he descended the great river *Cote de Nord*, up to 55°, where he encountered a large bank of ice. At all events that shows he did not go further than the 55th degree, as the Jesuits would have likely stated the highest degree of latitude to which he went. Being a well-known and eminent man in the Province, they would not have been inclined to belittle his services.

*By Mr. Trow :*

504. Can you cite any cases where, in the interpretation of treaties, a discoverer of a coast held claim to the water-shed?—If you will send for the first volume of Phillimore's International Law, I will refer to it. It was the constant pretension of the English colonists on the coast of the Atlantic, who all had charters such as this, that their charters extended to the South Sea, but the French, on the other hand, contended the contrary, and held that the English colonists should not go beyond the height of land; that the French, as discoverers of the Mississippi, were entitled to all the lands drained by that river and its confluent. That was the contention between the French and the English at the particular time the Treaty of Utrecht was made.

*By Mr. Trow :*

505. In the event of their not getting occupation or making settlements, how would the case stand?—It was looked upon in the view of the necessary protection of the Colony; and the natural boundary, which was the height of land, was the natural defence of the territories against invasion.

*By Mr. Weldon :*

506. Did the English maintain that doctrine?—No; they contended for a wider doctrine. The other was the French contention. After the Treaty of Utrecht, the settlement of what was the boundary at Lako Temiscaming, which was really the most accessible point from Canada to Hudson's Bay, showed that the French were willing to accede that the Hudson's Bay Territory extended to the height of land.

*By Mr. Ross :*

507. Mr. Mills, in his report, cites a number of voyages made to Hudson's Bay from Quebec; Bourdon's in 1656, and Dablon's voyage?—Dablon never went beyond Rekouba, a tributary of Lake St. John. He never got over the height of land.

508. Then, where was Sieur de la Caubure, in 1633? Mr. Mills says: "He proceeded overland, with five men, to Hudson's Bay, possession whereof he took in the King's name, noted the latitude, and deposited, at the foot of a large tree, His Majesty's arms, engraved and laid between two sheets of lead, the whole being covered with some bark of trees."—I don't think that is authoritative. I investigated that claim myself, and concluded there was no evidence that any one had crossed the height of land until Albanal went over, in 1671; that is two years after the settlement at Rupert's House.

*By Mr. Weldon :*

509. Then, as I understand, this clause in the Hudson Bay Company's charter, in your idea, is that there was no subjects of any Christian prince beyond the height of land?—Yes.

*By Mr. Ross :*

510. You are acquainted with Duquet and L'Anglois voyage in 1663, when they renewed the act of taking possession by setting up His Majesty's arms there a second time. This is proved by the *arrêt* of the Sovereign Council of Quebec, by the orders in writing of Messrs. d'Argenson and d'Avanqour, which is to be found in the New York Historical Collection, volume 9, pages 203, 204 and 205?—I do not consider this authentic.

511. In 1667, Raddison and DesGrossilliers traversed the country from the St. Lawrence to the upper lakes and thence to the Bay, crossing from Lake Superior.—I do not think there is any proof that Raddison and DesGrossilliers ever went beyond the height of land at all. They went up to Lake Superior, and heard from the Indians there was a large bay to the north. Then they went to England, and induced the English to go to Hudson's Bay. But, as far as that is concerned, it was all done away with by the Treaty of Utrecht.

512. But if we get the abandonment of the claim to pre-occupation by the English, I think it will change the arrangement a little. It is an important point in the investigation to prove the pre-occupation by the French?—A good deal of that is taken from statements made after the claims to the country came into dispute.

513. Well, they are historical?—With regard to DesGrossilliers and Radiston it is said they went to Lake Winnipeg and heard from the Indians there of the Hudson's Bay. I don't believe they ever went to the Bay. Jeremy was in possession of Fort Bourbon in 1714, when it was delivered over to the British authorities, and in a book which he wrote he attempts to describe the geography of the Nelson River and of that country, showing that he knew nothing whatever about the waters, their course, or the size of the lakes. Now, as to the territorial question, Phillimore's International Law, volume I, page 277, says:—"In the negotiations between Spain and the United States of America respecting the western boundary of Louisiana, the latter country laid down with accuracy and clearness certain propositions of law upon this subject, and which fortify the opinion advanced in the foregoing paragraphs. 'The principles' (America said on this occasion) 'which are applicable to the case, are such as are dictated by reason, and have been adopted in practice by European Powers in the discoveries and acquisitions which they have respectively made in the New World. They are few, simple, intelligible, and, at the same time, founded in strict justice. The first of these is, that when any European nation takes possession of any extent of sea coast, that possession is understood as extending into the interior country, to the sources of the rivers emptying within that coast, to all their branches, and the country they cover, and to give it a right, in exclusion of all other nations, to the same. It is evident that some rule or principle must govern the rights of European Powers in regard to each other in all such cases, and it is certain that none can be adopted in those to which it applies more reasonable or just than the present one. Many weighty considerations show the propriety of it. Nature seems to have destined a range of territory so described for the same society, to have connected its several parts together by the ties of a common interest, and to have detached them from others. If this principal is departed from, it must be by attaching to such discovery and possession a more enlarged or contracted scope of acquisition, but a slight attention to the subject will demonstrate the absurdity of either. The latter would be to restrict the rights of an European Power, who discovered and took possession of a new country, to the spot on which its troops and settlements rested, a doctrine which has been totally disclaimed by all the powers who made discoveries and acquired possessions in America.'"

By Mr. Trow:

514. Can you cite any case where prior occupation of the interior would disallow or annul the coast discovery?—I have never seen any such case. That is an occupation from the rear, you may say.

Yes; from the rear. It might be an extent of country covering hundreds of miles.—This is a large territory, and the Hudson's Bay grant astonishes one by the great extent of it, but one must recollect that the Bay itself is 1,600 miles in width.

By Mr. Ross:

515. But that charter did not cover any land occupied by any other Christian Prince?—There was no land there, at that time, occupied by any Christian Prince.

516. The fact of settlement by the French from the south to any extent would preclude England from any claim to the territory which the French occupied?—I do not think it can be shown that there was any settlement or possession by any other



Christian power; that is, that no discoverer from Canada ever settled across the height of land until Albanal went in 1671. He was the first man who went across, and that occurred one year after the granting of the charter, and two years after the settlement.

*By Mr. Weldon:*

517. Did he establish posts on the Albany River?—He established no posts, but went over as a discoverer, taking possession of the country in the King's name.

*By the Chairman:*

518. Supposing the French had occupied the country, and were there before the Treaty of Utrecht, that Treaty would settle all that matter?—That is my view. The Treaty of Utrecht was drawn in Latin because, no doubt, Latin is a more mathematical language than English. The Treaty of Utrecht says:—"The said most Christian king will restore to the Kingdom and Queen of Great Britain, in full right to be possessed for ever, the Bay and Strait of Hudson, together with all lands, seas, maritime coasts, rivers and places in the said Bay and Straits situate; no places, whether of land or sea, looking towards the same, being excepted, which are now possessed by the subjects of France." The expression is "*spectantibus ad eadem*," looking in the same direction.

*By Mr. Trow:*

519. It is a very peculiar boundary because it overlaps?—Well, *ad eadem* is "look towards, the rivers, and anything that looks towards the rivers, must be land drained by the rivers.

*By Mr. Weldon:*

520. The Treaty says, "no tracts of land or of sea being excepted which are at present possessed by the subjects of France." Would that not refer to the previous language used in the Treaty that it was "lands, seas, rivers and places connected with the Bay of Hudson?"—I do not think so. It says, "you will re-establish us in our possession of Hudson's Bay, not excepting anything you may be in possession of." You will give us back everything.

*By Mr. Ross:*

521. You will remember that, in 1628, the English, under Kirk, captured Canada, and by the Treaty of St. Germain-en-Laye, it was agreed that the King of Great Britain would give up and restore all the places occupied in New France, Acadia and Canada by the subjects of the King of Great Britain. That whole argument is based upon the assumption that New France, under Louis XIII, included the whole country around Hudson's Bay. Does it not appear by that that France considered she owned the country around Hudson's Bay?—No; although the French said it was anciently discovered by them, I do not think there is any proof of that.

522. But here we have two antagonistic claims: the Hudson's Bay Company making their claim by the charter of 1670 and the charter of Louis XIII, anterior to that in 1626, granting the country to the Frozen Ocean?—I think one of the Popes divided the world between two kings to govern, the one one-half and the other the other half, but I cannot see that the division carried much with it, except, perhaps, sentiment.

523. Then the argument will all come back to the matter of prior discovery?—Prior discovery and settlement. There is this to be said regarding the grant to the Hudson's Bay Company: Great Britain, neither by her Executive nor by her Parliament, has ever derogated from that grant; but, on the contrary, always supported and maintained it. After the Treaty of Paris, when the posts were given up, Great Britain did not say to the Hudson's Bay Company, "We have taken possession of this country, and you must be confined to what you actually settled upon;" but, in passing the Act of 1774, expressly bounded it by the territories granted.

*By the Chairman:*

524. There is not a single instance of the Imperial Government having declined to acknowledge the Hudson's Bay Company's claim?—They never professed to own anything on the Bay and Straits of Hudson, except what they had granted; and so strict were they not to interfere with the charter of the Hudson's Bay Company that

they refused to grant a charter to a rival company. In 1749 a man named Dobbs, who was anxious for a charter, applied for it, but they would not grant it, although Dobbs was willing to take it subject to the Hudson's Bay Company's rights. They would not grant it for fear that it would create difficulties between the Hudson's Bay Company and Dobbs' company.

*By Mr. Ross :*

525. Are you aware that, previous to the Treaty of Utrecht, the Hudson's Bay Company were prepared to surrender their rights?—I fancy they were willing just then to put up with what they could get. They were fighting for existence, and Great Britain, with war at home and war in Europe, was not likely to put forth any great effort to save an outlying place not of much use to the Empire.

526. Yet, if the Hudson's Bay Company thought they had a good right to the territory they would not have been very willing to surrender it. Does not the fact that they were willing to surrender militate against their claim?—That would depend upon circumstances. If you and I had a law suit about a piece of land to which I was positive I had a just claim of ownership, yet being aware that it would be very difficult, or, perhaps impossible, to oust you from possession, I might be willing to compromise and take half the land.

*By Mr. Trow :*

527. Do you think the Hudson's Bay Company had any right to the soil?—It is my view that they had a proprietary right.

*By Mr. Brecken :*

528. That would depend upon the wording of the Charter?—Yes, but the Charter is as wide as it possibly can be.

*By Mr. Ross :*

529. It is a conveniently wide Charter to have any amount of litigation upon?—I think their keeping the North-West Company out depended on their success of their territorial rights granted, and they probably would have brought action for trespass against the North-West Company, and an action for trespass in a tract of country like that would not avail much. Their object was to have their Charter established as to the monopoly of trade.

*By Mr. Brecken :*

530. The question of possession *pedis* would be difficult to establish?—There was no question of possession *pedis*, they travelled in canoes generally.

*By Mr. Weldon :*

531. By the Treaty of Neutrality in 1686 it was agreed that the said Kings shall have and hold the domains, rights and pre-eminences in the seas, straits and other waters of America, in the same extent which of right belongs to them, and in the same way they enjoy them at present. Now, at that time did not the French hold the forts on the Albany River?—Yes; some of the forts, at all events on Hudson's Bay, and the Hudson's Bay Company complained very bitterly about the Treaty of Ryswick.

532. I refer to the Treaty of Neutrality of 1686, eleven years before the Treaty of Ryswick. The French had posts established as far as the Albany River?—They certainly had on Hudson's Bay.

533. And those forts were restored to them after the Treaty of Ryswick?—I doubt if there was any restoration. I think they were held by might until the Treaty of Utrecht.

534. The language of the Treaty of Utrecht is peculiar. It says: "The said most Christian King shall restore to the kingdom and Queen of Great Britain, to be possessed in full right forever, the Bay and Straits of Hudson, together with all lands, seas, sea coasts, rivers and places situate in the said Bay and Straits and which belong thereunto, no tracts of land or of sea being excepted which are at present possessed by the subjects of France." The whole of that section 10 appears to apply to the Hudson Bay Territory?—Everything.

535. In a direct line?—Everything looking in that direction. It means they shall give up everything that is there included.



*By Mr. Breckin :*

536. If France possessed anything on the other side of the Hudson Bay Territory, it was all to go.

*By Mr. Weldon :*

537. The context of that 11th section is entirely confined to territory with regard to Hudson's Bay and Straits. "No tracts of land or of sea being excepted which are "at present possessed by the subjects of France." Now, I take it, the exception must be governed by the principal object which was to restore the Bay and Straits of Hudson, together with lands, etc., situate in the said Bay and Straits. This is further shown by the condition subsequently about delivering up the fortresses. "It is, "however, provided that it may be entirely free for the company of Quebec and all "other, the subjects of the most Christian King, whatsoever, to go by land or by sea "whither soever they please, out of the lands of the said Bay, together with all their "goods, merchandizes, arms and effects, of what nature or condition of things soever," except such things as are above referred to in this article?—That is not a correct translation.

538. As the clause provides it shall be free for the Company of Quebec to go wherever they please, out of the lands of the Bay, shows they must have had lands on the Bay?—They had Fort Bourbon on the Nelson River.

539. Then, they agreed the limits would be fixed between the said Bay of Hudson and the places appertaining to the French; which limits both the British and French subjects shall be wholly forbid to pass over. This was never done?—It is a singular thing that it was the idea prevailing on this continent, because, in the discussion with respect to the treaty, which was afterwards the Treaty of 1842, between Great Britain and the United States, fixing the boundary from the Lake of the Woods west to the Rocky Mountains, the American Minister at the Court of St. James asserted, in diplomatic correspondence, that the southern limit of Hudson's Bay Company's territory is the 49th parallel, and that Louisiana extends up to the limits of the Hudson's Bay Company's territory, and, therefore, that is the boundary between the United States and the British possessions. Subsequently, we find Mr. Madison writing to Mr. Livingstone with regard to the boundaries of Louisiana, which the United States had purchased from Spain. In their correspondence with the Spanish Court we find them asserting the same thing, namely, that the 49th parallel was the southern boundary of the Hudson's Bay territory. I thought Ontario would say:—You, the Hudson's Bay Company, claimed the 49th parallel as being the southern limit to your possessions when Great Britain was treating with the French for the settlement of the exact boundary, and inasmuch as you claimed that, you should be bound by that. That is one view.

*By Mr. Ross :*

540. That would simply mean the northern boundary of Ontario would be the 49th parallel?—Yes.

541. It was intended to be more than that?—If the claim is to the height of land it would not be more as regards territory.

*By Mr. Weldon :*

542. The opinion given by Lord Westbury and Sir Henry G. Keating on this is : "To these elements of consideration upon this question must be added the enquiry " (as suggested by the following words of the Charter, viz: 'Not possessed by the subjects of any other Christian Prince or State') whether at the time of the Charter, "any part of the territory now claimed by the Hudson's Bay Company could have "been rightfully claimed by the French as falling within the boundaries of Canada or "Nouvelle France, and also the effects of the Acts of Parliament passed in 1774 and "1791?"—When France settled on the banks of the St. Lawrence, she was entitled to all the lands drained by rivers flowing into the St. Lawrence. Consequently France, as limited by discovery, would only go to the height of land. If you apply the same rule to each, you put the boundary at the height of land. Then, France, could not, by reason of any discovery of lands on the St. Lawrence, claim lands north of the height of land.

*By Mr. Ross :*

543. Only, if it could be proved she had actually settled there ?

544. *The Chairman :*—The Treaty of Utrecht settles all that.

545. *Witness :*—What I look at is this: From the Treaty of Utrecht, down to the time the Rupert's Land Act was passed, Great Britain never claimed a right to detract from the Hudson's Bay Company's Charter, or from what the Hudson's Bay Company said they owned. Great Britain never claimed to have anything at Hudson's Bay outside of what was granted to the Hudson's Bay Company. After the Treaty of Utrecht, she asked the Hudson's Bay Company where their boundary was to be found, treating that country as having been properly granted to that Company.

*By Mr. Ross :*

546. From the establishment of the Government in Canada by the Treaty of Paris in 1763, Canada was described by a line drawn from the Bay of Chaleurs, running north until it strikes the St. Lawrence?—That was merely establishing a Government for Quebec in 1763.

547. *The Chairman :*—Which was first enlarged by the Quebec Act.

548. *Mr. Ross :*—And divided by the Constitutional Act of 1791. Then by the Constitutional Act of 1791, and by proclamation the rest of what was Canada became Upper Canada.

549. *Witness :*—I do not think that affected in any way the Charter of the Hudson's Bay Company. The proclamation was for the purpose of dividing Quebec into two separate Provinces, for the purposes of civil government. There was no intention to derogate from the grant of the Hudson's Bay Company at all; and although in the boundary description it is said up to Lake Temiscaming, and then due north to the boundary line of Hudson's Bay, I think what was meant was clearly to the boundary line of the territory granted the Hudson's Bay Company.

550. But in subsequent commissions, the words are not to boundary of Hudson's Bay, but to the shore of Hudson's Bay?—You can understand easily how that occurred. I understand the Duke of Argyll, who was over here, thought the St. Lawrence rose in the Rocky Mountains. You can understand, therefore, how readily a mistake could be made by a person altogether unacquainted with the country. If you were copying a commission to Lord Elgin (and it was then the change was made, using the word "shore") and you came to the words "north to the boundary line of Hudson's Bay," you would say: what an absurd definition this is, the boundary line of a bay must be a shore; and you would write the word "shore."

551. If I intended to draw up a commission, I would put in the word territory?—Yes; you would if you wanted to be exact. But they were dividing the Province of Quebec. They were not sitting down to do an act to interfere with the Hudson's Bay Company. How did that did alter the boundary? I will take an illustration: supposing we petitioned the Lieutenant-Governor in Council to divide the town of St. Mary's into wards, and a proclamation was issued dividing it into wards, could it be said to take away the lands granted to any gentleman holding lands in that town? It certainly would not, and neither could it be said that the Act dividing the Province of Quebec took away territory granted to the Hudson's Bay Company. One would be equally as absurd as the other.

552. Yes, so far as that is concerned; but the contention is that the land was not ceded to Hudson's Bay Company, but by the Treaty of Utrecht it was ceded to Great Britain?—So it was, and Great Britain might have said: This has been ceded to us, and now your rights are done away with; and consequently, now that we have got back the land, we are not going to fulfil our grant to you. But the contrary appears, because the Imperial Government has always recognised the grant to the Hudson's Bay Company.

553. *Mr. Brecken :*—Speaking of the ignorance of English statesmen, old Lord Bathurst asked the question: What description of timber is grown on the banks of Newfoundland ?

554. *Witness :*—There was a Statute of 18 George II., chapter 17, offering £20,000 for the discovery of a north-west passage. In that Statute, so particular was Parliament



about the rights of the Company, that it provided no interference should be had with the privileges of the Hudson Bay Company. Then the Act of 2nd William and Mary, confirming the Charter, although limited to seven years, yet was a distinct parliamentary confirmation of the Charter so long as it lasted. When the Act expired, the Company had still the Charter to fall back on; but the Parliament of Great Britain has chosen to confirm that Charter, and confirm it in words, which would entitle the Company to go to the height of land.

*By Mr. Weldon :*

555. The effect of that is merely a Parliamentary recognition of the Charter?—  
It is a confirmation of it.

*By Mr. Ross :*

556. Whatever meaning the Charter bore originally would remain; except it would have additional force from an Act of Parliament. Then there was the Act 4th William and Mary, Chapter 15, which provided for a tax on Hudson Bay Company shares, thus recognising the legality of the Charter as granted by the Crown.

*By Mr. Weldon :*

557. It would seem that Sir Henry Keating adopted the view that the Crown could not undertake to attack the validity of the Charter now?

*By Mr. Ross :*

558. How would you explain this? A difficulty occurred the other day in the examination. In the Treaty of Versailles, the Hudson Bay Company's territory is described as bounded by a line running north to the Lake of the Woods?—That is in the commission to Sir Guy Carleton, 1786.

559. After describing the line running through Lake Superior, northward of the Isles Royal and Phillipeaux to the Long Lake, the commission says: Thence through the middle of said Long Lake, and the water communication between it and the Lake of the Woods, to the said Lake of the Woods, thence through the said lakes to the most north-western point thereof, and from thence, on a due west course, to the River Mississippi, and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay?—I will explain that. According to the Quebec Act, northward means an extension from the south of the territories to the north. At that particular point there would be nothing; it would be length without breadth.

560. We come to a point west of the Lake of the Woods and go northward from that to Hudson's Bay?—Not only from that, but from the whole line to the east.

561. That would throw the Hudson Bay Company's territory north of the Lake of the Woods?—Yes, because the United States had taken in all south of the Lake of the Woods. The United States having taken it, that was the boundary line between the two countries, so that the boundary line between the two countries is fixed in the Quebec Act, and was followed in that commission to Sir Guy Carleton, with the difference, it says, westward to the banks of the Mississippi, and northward along the banks of the Mississippi to the southerly boundary of the territory granted to the Hudson Bay Company. In the Quebec Act it is said, northward to the territory granted to the Hudson's Bay Company, leaving out "along the banks of the Mississippi." I would give both the same interpretation; it works both ways. Those who say northward is not a due north line, when they come to advocate the Ontario view, say that does not apply, because if you go northward you would not touch Hudson Bay.

*By Mr. Ross :*

562. The words are "northward from the confluence of the Ohio and Mississippi. Must you not go a good deal north before you reach the country of the Hudson Bay Company?"

563. *Mr. Weldon* :—You go northward along the banks of the Mississippi?

564. *Witness* :—I think that "northward" was just a general description that the territory extended northward to the Hudson's Bay territory.

*By Mr. Ross :*

565. It said northward from the confluence of the Ohio and Mississippi to the southern boundary of the territory of the Merchants Adventurers. Must you go north along the banks of the Mississippi a good distance before you come to that southern boundary. Here we go due west to the Lake of the Woods, and then we say northward from that point to southern boundary of the territory of the Hudson Bay Company. Does it not mean you go northward some distance?—Not necessarily. I don't think so; the distance might be a foot, 10 miles or 1,000 miles.

566. It comes in here for the first time?—Sir Guy Carleton, in that commission, was following what description they had in the office.

*By Mr. Weldon :*

567. I understand you to say that the territory of the Hudson's Bay Company came down to 49th parallel?—Yes.

*By the Chairman :*

568. It has been contended that the object of the Quebec Act was to embrace in the territory west of the division line the whole of the country known as Canada. Since that contention was put forward, we have discovered documents of some importance. Of course, you know the first commission, after the Act of 1791, to Lord Dorchester, simply refers to the division of the Province of Quebec into Upper and Lower Canada. It does not add to or take from either?—No; it does not profess to.

569. Now we have discovered a document not hitherto brought to light, being no less than His Majesty's instructions to his Excellency Lord Dorchester, dated at St. James, 16th Sept., 1791, which contain the following: "With these our instructions you will receive our commission under our Great Seal of Great Britain, constituting you our Captain-General and Governor-in-Chief in and over our Provinces of Upper and Lower Canada, BOUNDED, AS IN OUR SAID COMMISSION IS PARTICULARLY EXPRESSED." The same instructions go on to say: "And YOU ARE, WITH ALL DUE SOLEMNITY, BEFORE THE MEMBERS OF OUR EXECUTIVE COUNCIL, TO CAUSE OUR SAID COMMISSION TO BE READ AND PUBLISHED." Now, here is the description which was to be proclaimed. On the 18th Nov., about the time those instructions should have reached Quebec, General Clarke issued a proclamation in which he recited the Order in Council distinctly enough as regards the intention to divide the Province into two, but ended by saying: "to the utmost bounds of the country known as Canada," an expression in no way authorized by the Order in Council or his instructions. Could that proclamation take precedence of the Act and the King's instructions?—I should say not, unless authorised. It was without authority at all.

570. We have discovered another document, dated 22nd December, 1774, the same year in which the Quebec Act was passed. It has been contended that the Quebec Act was intended to cover the whole country, while these instructions refer to *other countries and dependencies* which he was to govern besides those covered by the Quebec Act. It says, instructions to our trusty and well-beloved Guy Carleton, Esq., our Captain-General and Governor-in-Chief in and over our Province of Quebec, in America, and of all *our territories dependent thereon*. Then he has instructions to provide, among other things, a way of governing the "interior countries" and regulating the "peltry trade." He has to "protect the fisheries of the Gulf of St. Lawrence" down to Labrador. Again, he is charged with the care of inferior localities with limited jurisdiction in criminal and civil matters, such as "the Illinois country." Then the instructions go further and refer to places where it may be necessary to make provision for maintaining law and order, evidently referring to countries outside the Province of Quebec, as constituted by the Act of 1774?—That means countries without civil government, I suppose.

571. There is a judicial decision as to the meaning of the word northward in the Quebec Act. The decision was that northward evidently meant due north?—That is in the Reinhardt case. No doubt about it, it is a clear decision, and were I deciding it judicially, I would be bound to follow that decision. But if you ask my individual opinion here, as a person looking into the matter, I should determine that "northward"



had reference to the territories and not to a liminary line; but I do not think that makes the slightest difference. I was going to mention another thing. You will find that the mistake about the 49th parallel was very curious. It was entertained in Canada as well as the United States in early days. When Lord Selkirk got his grant, he got it from the Hudson's Bay Company, bounded by the height of land. Lord Selkirk had made a prospectus and sent it out in Great Britain for the purpose of getting emigrants to the Red River. John Strachan—I do not think he was then the Rev. John Strachan—afterwards Bishop of Toronto, was very active in opposing Lord Selkirk's scheme, and wrote another letter addressed to Lord Selkirk, which was published in the press, dissuading emigrants from going to Lord Selkirk's settlement, and saying: You, Sir, know, as well as any person, that you have no title to the land for which you have a grant, for the 49th parallel is the southern boundary of the Hudson's Bay Company's territories."

*By Mr. Ross:*

572. Did not that claim to the 49th parallel grow out of the arrangement about?—It grew out of the fact that the Hudson's Bay Company were insisting with Great Britain that their boundary should be established on the 49th parallel.

*By the Chairman:*

573. The Act of 1803 extended the jurisdiction of Quebec to the Indian Territories?—Yes, I was going to say this: It struck me when I was acting for the Dominion in the matter. I wrote to see if they could not get information from the Executive Council of the old Province of Quebec from 1774 to 1791, to show what view obtained, so far as the authorities were concerned, with regard to the construction of the Quebec Act, whether it meant due north or northward. The answer I got was that they had examined and there was nothing to be found there. You will find, however, the proclamation of Lord Dorchester of 24th July, 1788, divided the country into districts. The western district is the district of Hesse. He does not describe the western boundary there, but extends the district to the northward and west. Then, in 1791, the name of Hesse, Lunenburg, Nasseau, &c., were changed, Hesse becoming the western district. Then to the western district was added all other parts of Canada not already divided into districts. I thought that perhaps having found the proclamation of Lord Dorchester in 1788 dividing the country, that probably between 1774 and that time something might be found in the Executive Council office showing the view Lord Dorchester and his officers held as to the limits of the country on the west and north.

574. The commission of 1786 to Lord Dorchester ran the western limit of Quebec to the Mississippi, the commission to Lord Durham carried the western boundary of Upper Canada into Lake Superior only. Do you think that such Commissions and Proclamations could really alter boundaries established by Act of Parliament?—I do not think that any lawyer will be found who will affirm seriously that any proclamation for the purpose of dividing the Province, or any commission issued to a Governor of the Province can have any effect whatsoever on the territorial rights of the proprietors of the country dealt with.

*By Mr. Brecken:*

575. Of course, it would not prejudice the rights of outside parties, but would it not be looked upon as a sort of corroborative evidence?—Of course, it would throw light upon contemporary opinion, but it could not interfere with territorial rights. When they were dividing Quebec into two Provinces I do not think they ever thought of the Hudson's Bay Company's territory at all; and the boundary line of Hudson's Bay was considered as the boundary line of the territory and not of the sheet of water. That is the view which I entertain. Some time ago I was anxious to get the return made by Commissioners, Captain Knight and Mr. Kelsey, who accepted a commission from Queen Anne to receive possession of the forts on Hudson's Bay after the Treaty of Utrecht. Letters were sent by the King of France to Quebec, directing these forts to be given up; and I thought that the letters and the return made by these Commissioners of what they did would be important. Both Knight and Heleay I think, were Hudson's Bay people; they were both employed by the Company, and

the commission was issued by the Crown to them to receive possession of these forts, not for Great Britain but for the Hudson's Bay Company.

*By Mr. Ross :*

576. That is a question which is disputed; it is said they were acting for the Queen?—I think there is no doubt that they were acting for the Hudson's Bay people, because they were named in the Commission as the Hudson's Bay people, to receive the forts.

*By Mr. Trow :*

577. Your researches have all been, I suppose, to make out a case with some degree of colour in the interests of the Dominion, and I think it is perfectly justifiable that a solicitor employed to do so should do so?—I want it to be understood, because there is sometimes a misconception when a lawyer speaks, that I am not stating the case as I would have argued it before the Commission. I am giving my conscientious view.

578. I am aware of that, but I have reference to the report read?—That report was a guide for Mr. MacMahon who was innocent of any knowledge of the thing at all. He came to me for any notes I might have made and I gave them to him, reciting them to a shorthand writer in the rather disconnected way in which they are before the Committee.

*By Mr. Robinson :*

579. Let me ask you whether, upon the best consideration you can give to this question, you are not of the same opinion as you were when you prepared that statement?—Yes, I am of the same opinion.

580. Your opinion is now the same then both as to the western and northern boundaries?—Of course the height of land forms, in my opinion, both the westerly and northerly boundaries.

Extracts from Twiss, Oregon, and some of the other memorandum left by Judge Armour, now follow:—

#### TWISS.

"The difficulty in executing the provisions of boundary treaties in America has arisen chiefly from adopting the data which incorrect maps have furnished, to which there has been nothing in nature corresponding, and from agreeing to certain parallels of latitude, as appearing from these maps to form good natural frontiers, but which have been found, upon actual survey, to frustrate the intentions of both parties"—*Twiss, Oregon, 212.*

"Maps, however, are but pictorial representations of supposed territorial limits, the evidence of which must be sought for elsewhere. There may be cases, it is true, where maps may be evidence; when, for instance, it has been specially provided that a particular map, such as Mitchell's map of North America, shall be the basis of a convention, but it is to be regretted that maps of unsurveyed districts should ever have been introduced into diplomatic discussions, where limits conformable to convenient physical outlines, such as head lands or water-courses, are really sought for, and are understood to be the subject of negotiation. The pictorial features of a country, which, in such cases, have been frequently assumed as the basis of the negotiation, have not unusually caused greater embarrassment to both the parties in the subsequent attempt to reconcile them with the natural features than the original question in dispute, to which they were supposed to have furnished a solution. That the name of Nouvelle France should have been applied by French authors and French maps to the country as far as the shores of the Pacific Ocean was as much to be expected as that the name of California should have been extended by the Spaniards to the entire north-west coast of America, which we know to have been the fact, from the negotiations in the Novtka Sound controversy."—*Twiss, Oregon, page 228.*

"This is another very remarkable instance of the danger of referring even to the best maps, when territorial limits are to be regulated by the physical features of



"a country. There must have been a monstrous error in Mitchell's map, which the Spanish Commissioner had before him, if such a line could have been drawn upon it from the source of the Arkansas due west to the source of the Multonarnah, the modern Willamette River."—*Twiss, Oregon, page 235.*

"The claim, however, to the westwardly extension of New France to the Pacific Ocean, requires some better evidence than the maps of the French geographers. A map can furnish no proof of territorial title; it may illustrate a claim, but it cannot prove it. The proof must be derived from facts, which the law of nations recognizes as founding a title of territory. Maps, as such, that is, where they have not had a special character attached to them by treaties, merely represent the opinions of the geographers who have constructed them, which opinions are frequently founded on fictitious or erroneous statements. An examination of the collection in the King's Library at the British Museum will remove all scepticism on this head." *Twiss, Oregon, page 306.*

#### TITLE BY DISCOVERY.

Great Britain alone, of all countries, was the only nation whose ships discovered the Bay and Straits of Hudson, or sailed into them, till after the granting of the Charter.

John Cabot, a Venetian living in London, had three sons, Lewis, Sebastian and Samlus, commissioned by the King, Henry VIII. Set sail May, 1497, and 24th June 1497, discovered Newfoundland and the coast of Labrador, and sailed thence about as far as Chesapeake Bay. Edward VI. made him Grand Pilot of England in 1549 and pensioned him.

Sir Martin Frobisher, sent out by Queen Elizabeth with small ships in 1567 saw the coast of Labrador. Went out following year with three ships, 1577, discovered Frobisher's Straits. Natives had arrows armed with iron points.

Queen sent him out with 15 small vessels to establish a fort on the land which she named "Meta Newguita." Sailed May 31, 1578. *Hacklenyt was with him assisted nothing.*

In 1585 John Davis set out. Discovered Davis Straits and Cumberland Straits

1586 set out on second voyage. Discovered Cumberland Island. Touched at N on the coast of Labrador.

1587 he set out again. Named Cape Chudley and Warwick's Forland.

In 1589 Weymouth sailed in the *Discovery* to Warwick's Forland, which he found to be an island, and entered Sumley's Inlet.

Hudson's first voyage in 1607 discovered Hold with Hope six or seven degrees to the north of Inland, on east of Greenland. Tried to get round Greenland and return by way of Davis Straits.

Second voyage, 1608, reported nothing.

Third voyage, April 17, 1610, discovered Hudson's Straits, named Cape Diggs and Cape Walsingham. Wintered in the Bay.

In 1612 Button set sail. Wintered at Nelson River, which he named from his mate. *Resolution* commanded by Button. Discovered by Ingram.

1614 Captain Gibbons sailed, but only got to Hudson's Straits.

1615 Bylat went out in the *Discovery*.

1616 Bylat, with Boggin for pilot, went again. Smith's Sound, Lancaster Sound, Whale Sound, Cary's Islands, Jones Sound, Baffin's Bay.

1616 to 1631, Haukbridge.

1631 James Fox went to Nelson's River. Found Buttons Cross overturned. Erected it. Met Capt. James, August 29th.

1631 Thomas James wintered in James Bay.

#### CLAIM OF BOURDON.

See Mills, page 97.

"Lindsay, page 506.

Bourdon was well known by the priests. He was Ingenieur en chef et procureur de la Nouvelle-France. (Le Sieur Jean Bourdon) Relation des Jésuites, 1637, page 9, "dirige un feu d'artifice."

1646, page 15, accompagne le P. Jacques chez les Iroquois.

1647, page 36. He returns to Quebec.

1658, page 9, le 11 (du même mois d'aoust 1657) joint la banque de monsieur Bourdon, lequel était descendu sur le grand fleuve du côté du Nord, voyage jusqu'au 55e degré, où il rencontra un grand banc de glace qui le fit remonter, ayant perdu deux Hurons, qu'il avait pris pour guides. Les Esquimaux, Sauvages du Nord les massacrèrent, et blessèrent un Français de trois coups de flèches et d'un coup de coateau.

See Charlevoix, vol. ii, page 186, describing his journey with Jacques in 1646, letter to page 195 (Jacques was killed 1647.)

Bourdon removed from office, item Sieur Villeny by Mr. de Mesy.

Charlevoix, vol. iii, page 74, or 1664, and sent by France.

Charlevoix, vol. iii, page 230. "Since it is certain" that the English pressed nothing on that Bay when in 1656 the Sieur Bourdon was sent there to secure its possessions to France, a ceremony repeatedly renewed in subsequent years.

*Churchill's Collection of Voyages*, vol. ii, page 430.

Captain Thomas Jones discovered James' Bay. His vessel was provided by merchants of Bristol.

*He is named in His Majesty's Royal Letters.*

Set sail May 2nd, 1631.

August 20th. Named the land "The new Principalities of South Wales," and drank a health in the best liquor we had to Prince Charles His Highness, whom God preserve.

August 29th. Fell in with a ship, "Fox."

September 3rd. Named Cape Henrietta Maria by Her Majesty's name who had before named our ships.

September 10th. Named land "Weston's Island."

September 13th. That he would go to the bottom of Hudson's Bay and see if he could discover a way into the River of Canada.

September 19th. Named "the Earl of Bristol's Island."

September 23rd. Named "Sir Thomas Roe's Island."

October 2nd. Named "Earl of Danby's Island." *Wintered on it.*

December 25th. Made a merry Christmas, and named the port he wintered in, in honor of Sir James Winter, "Winter's Forest."

May 29th, 1632. Named the island they wintered on, Charlton's Island, in honour of Prince Charles' birthday, and their habitation Charlestown.

June 24th. Whereas, I had formerly cut down a very high tree, and made a cross of it, to it I now fastened the King's and Queen's Majesties pictures drawn to life, and doubly wrapt in lead, and so close that no weather could hurt them. Betwixt both these I affixed His Majesty's Royal titles, viz.: Charles the First, King of England, Scotland, France, and Ireland; as also of Newfoundland and of these territories; and to the westward as far as Nova Albion; and to the northward to the latitude of 80 degrees, etc.

On the outside of the lead, I fastened a shilling and a sixpence of His Majesty's coin; under that we fastened the King's Arms fairly cut in lead, and under that the Arms of the City of Bristol. And, this being mid-summer day, we raised it on the top of the bare hill, where we had buried our dead fellows; formally by this ceremony taking possession of these territories to His Majesty's use.

July 2nd. Found on Danby Island two stakes driven into the ground about a foot and a-half and fire-brands, and pulling up the stakes found they had been cut sharp at the ends with a hatchet or good iron tool.

July 3rd. Set sail.

July 22nd. Erected a cross on Cape Henrietta Maria, fastened the King's Arms and the Arms of the City of Bristol to it. Left his dogs ashore, one with a collar on.

October 22nd. Arrived at Bristol. Reasons that as North-West Passage can be found and that there is a good deal of land between Hudson's and Passage.



*Letter from Sir John Rose to the Secretary of State, Ottawa.*

BARTHOLOMEW LANE, E.C.,  
25th June, 1877.

*Boundary Question.*

MY DEAR SIR,—I have now the pleasure to enclose, under separate cover, all the documents I can procure enumerated in your letter of the 5th instant. These are: 1. Petition from the Hudson's Bay Company to the Lords Commissioners of Trade and Plantations, dated 4th August, 1714. 2. Memorial to ditto, dated 3rd August, 1719. 3. Statement of the posts of the company at the time of the surrender, and a statement of the posts of the North West Company in 1821.

I regret to say the Secretary of the Hudson's Bay Company informs me that it is impossible for them to give the date of the establishment of any of these posts. They grew up originally from encampments to their position.

4. Copy of the agreement between the Hudson's Bay Company and North-West Company in 1821.

5. Proceedings and evidence before, and report of the Committee of the House of Lords in 1749, respecting the company, together with a pamphlet giving interesting details on several of the points mentioned by you.

I regret to say that the commission issued by Queen Anne to Capt. Knight and Mr. Kelsey cannot be found, but I am causing a search to be made in both the Foreign and Colonial Offices for it, in addition to the other documents enumerated by you in your letter of the 11th instant.

I will reply more fully to that letter in the course of a few days, it being only received this morning, and I will endeavor as far as possible to get the further information asked for.

Yours, &c.

JOHN ROSE.

The Hon. R. W. SCOTT,  
Secretary of State, Ottawa.

WEDNESDAY 7th April, 1880.

The Committee met at 11.30 a.m., Mr. DAWSON in the chair.

MR. MURDOCH, C.E. and D.L.S., was examined and testified as follows:—

581. I am acquainted with the territory in dispute. I am a Civil Engineer in the employ of the Government. I have travelled from Winnipeg through that country to Lake Superior at different times. I have travelled from Manitoba in a line almost direct to the north of Lake Nipigon, to Nipigon Bay by those routes, (pointing out routes on map); also, from Thunder Bay to a point called Sandy Bay, about midway between Nipigon and Manitoba; also, further to the north, again midway between Sturgeon Lake and Sandy Lake. I have also gone by land and water as far as Fort Frances from Thunder Bay by water route. On the north of Lake Nipigon is generally a flat country, covered, immediately to the north of the Lake, densely with spruce timber and evergreens of that description. The land is low, and, in the spring of the year, swampy. As you ascend from the low grounds around the lake, you come into higher grounds. Proceeding westward, you come into portions where the soil is rich, that of the valleys in all these rocky countries being very fertile. Between the valleys, the country is rocky. As you go still further west, say to the shores of Eagle Lake, you come to a more level country.

*By Mr. Weldon:*

582. This is a hilly country throughout here?—Yes, near Sturgeon and Sandy Lakes:

*By Mr. DeCosmos :*

583. What is the elevation of these hills?—They vary in height from 25 to 100 feet, the latter being the maximum.

*By the Chairman :*

584. After leaving Sandy Lake and going along the tributaries of the Winnipeg you get into a better country?—Yes; immediately around Eagle Lake, the country is more flat. You can call it a level country.

585. Into what river system does Eagle Lake run?—It runs into the English River, which runs into Winnipeg.

586. What do you consider the climate in that region; is it such as to admit of the growth of wheat?—I should undoubtedly say so.

587. Do not the Indians grow Indian corn at Wabegon Lake, near Gull Lake?—I think they do. I know they grow it at Fort Frances.

*By Mr. Weldon :*

588. You have been there in winter?—Yes; both in winter and summer.

589. How is the winter?—It is, I suppose, about the same as Quebec winters are.

590. Much snow?—Yes; a good deal.

*By the Chairman :*

591. At what time does spring open about the Lake of the Woods and Lake Nipigon?—At Lake Nipigon the spring does not open sometimes by two weeks as early as at Thunder Bay.

592. But at Lake of the Woods it opens quite early?—At the time I was there in March, 1873, I had to be very careful in crossing at Kat Portage, owing to the opening of the water. In fact, I saw open water at that time.

593. Do you know anything of the old colony of Assiniboia, that was established by Lord Selkirk?—As to its boundaries?

594. *The Chairman :*—About it generally?—I know something of the character of the soil and country. I have lived there for the last year.

595. You have, I understand, a commission from Her Majesty to the Bishop of Rupert's Land?—Yes; here is the document. It is a copy of letters patent from the Queen to the Bishop of Rupert's Land, in 1849.

596. Are you aware what extent of territory the See covered?—As given in those letters patent it extends over the entire water-shed from the Hudson's Bay coast south to the height of land, and the height of land would be the boundary.

597. Would you read the document?—

BISHOP'S COURT, March 20th, 1880.

DEAR MR. MURDOCH,—

The following is the reference in the Letters Patent founding the See of Rupert's Land to the Boundaries :—

“Whereas His Majesty King Charles the Second, by letters patent under the Great Seal of England, bearing date at Westminster, the second day of May, in the twenty-second of His Reign, and in the year of our Lord one thousand six hundred and seventy, did incorporate a certain Company by the name of ‘The Governor and Company of Adventurers of England trading into Hudson's Bay,’ and did in and by the said letters patent, among other things, give, grant and confirm to the said Governor and Company, ‘All the lands and territories upon the countries, coasts, and confines of the seas, bays, lakes, rivers, brooks and sounds in whatsoever latitude they shall be that lie within the entrance of the Straits commonly called Hudson's Straits, that was not already actually possessed or granted to any of His subjects, or possessed by the subjects of any other Christian Prince or State,’ and did, moreover, ordain and direct that the land within the said limits, territories, and places should thenceforth be reckoned and reputed as one of His plantations and Colonies of America called ‘Rupert's Land’ \* \* \* \* \* We have determined to erect the said Colony of Rupert's Land into a Bishop's See or Diocese, to be styled the Bishopric of Rupert's Land. Now know ye, that in pur-



suance of such, our Royal intention, We, by these our letters patent, under the Great Seal of our United Kingdom of Great Britain and Ireland, do erect, found make, ordain and constitute the said Colony of Rupert's Land into a Bishop's See or Diocese, and so declare and ordain that the same shall be styled 'the Bishopric of Rupert's Land.'"

The above description extends Rupert's Land to the sources of the rivers in any latitude. It, therefore, carries the Colony of Rupert's Land to the Rocky Mountains to the source of the Saskatchewan and along the height of land very near to Lake Superior at some point on to the Labrador coast. Of course there is the exception of any part previously granted, etc.

But in ecclesiastical matters I never heard, and I think I may say my predecessor never heard, of any exception, and as far as we have had the means we have visited and directed the whole Colony of Rupert's Land from the height of land; and the members of the Church of England within that whole district have latterly, by mutual consent of bishops, clergy and laity, formed the Province of Rupert's Land inclusive of only such Colony of Rupert's Land, with the knowledge and approval of the English authorities, being enabled to do so by the said authorities. The Archbishop of Canterbury, by the Queen's mandate, having consecrated additional bishops for the colony, one to reside at Moose, the Bishop of Moosenee; one to reside in the Saskatchewan, the Bishop of Saskatchewan; one to reside in the far north, the Bishop of Athabasca. And the part of the Colony of Rupert's Land still under my own care, extends east to the height of land somewhere between 70 and 40 miles from Lake Superior. I have one of my clergy stationed at Fort Frances. As for the Diocese of Moosenee, it has been practically worked and visited all round, I believe to the height of land.

I send with this a copy of Synod reports and documents. On pages 3 and 4 you will find marked the limits of the several dioceses. The Diocese of Athabasca, however, is an addition to the Colony of Rupert's Land, being under the care of the Bishop of Rupert's Land, not by letters patent but from evangelical efforts. That district was never placed by the Queen in any See.

What I have written above upon the question of the effect of old grants, of French possessions, but it shows what was the practical of the case for many years. The Church has acted on that state of things and settled itself by it. I cannot but think it is a pity that the Province of Ontario, which is already so large and powerful in comparison with other provinces, should open up this matter of old grants, &c., for I presume the Hudson's Bay Company practically managed all the colony temporally, as the Church did spiritually.

I am, faithfully yours,

R. RUPERT'S LAND.

W. MURDOCH, Esq.

*By the Chairman :*

598. You have been in communication, I believe, with the Archbishop also? Yes; his Grace the Archbishop of St. Boniface, in a conversation we had on the subject, furnished me with a plan of his own, which I now exhibit.

599. Would you show the extent of his diocese and say how long it has been recognized as a diocese?—Here is a line drawn by his Grace along the international boundary line to the height of land, thence by the sinuosities of the height of land to the height of land between Hudson's Bay and Lake Winnipeg, and thence following the sinuosities of the height of land you can take in the whole extent.

*By Mr. DeCosmos :*

600. Where is the written or printed description of these?—It is in these maps which were furnished me by his Grace. They have been handed from Vicar to Vicar, as far back as all records they have, as the eastern boundaries of the diocese.

*By the Chairman :*

601. From what date back does that reckon ?—His Grace does not know how far back it does extend. It was given him by his predecessor.

602. From the first missionaries, I suppose ?—Yes, from the first who went there and occupied it as a diocese.

603. It is a diocese connected with Lower Canada ?—I suppose so.

604. There is no incorporation by Royal charter or proclamation or anything of that kind ?—Their records were lost at the time of the fire. Their records came down from the time of the old French occupation, very likely.

605. There was an Act passed in 1803 providing for the administration of justice in the Indian territories. Have you anything to show where these Indian territories were, or what was considered Indian territory by the Canadian authorities ?—I have the proclamation of Sir John Coape Sherbrooke, who was then Governor General of Canada.

606. *The Chairman :*—In 1816, there were troubles occurring at Red River, and after the Act of 1803, the Canadian authorities were making arrests and endeavoring to maintain order in these territories ?—This is the proclamation issued by Sir John Coape Sherbrooke, in English and French, which clearly shows the territory to which the Act was intended to apply :—

By His Excellency SIR JOHN COAPE SHERBROOKE, Knight Grand Cross of the Most Honorable Military Order of the Bath, Captain-General and Governor-in-Chief in and over the Province of Lower Canada, Upper Canada, Nova Scotia, New Brunswick and their several Dependencies, Vice-Admiral of the same, Lieutenant-General and Commander of all His Majesty's Forces in the said Province of Lower Canada and Upper Canada, Nova Scotia and New Brunswick, and their several Dependencies, and in the Islands of Newfoundland, Prince Edward, Cape Breton, and Bermuda, &c., &c.

#### A PROCLAMATION.

Whereas in and by a certain Statute of the Parliament of the United Kingdom of Great Britain and Ireland, made and passed in the forty-third year of His Majesty's Reign, intituled: "An Act for extending the Jurisdiction of the Courts of Justice "in the Provinces of Lower Canada and Upper Canada to the Trial and Punishment "of persons guilty of Crimes and Offences within certain parts of North America, "adjoining the said Provinces," it is amongst other things enacted and declared that from and after the passing of the said Statute, "All Offences committed within any "of the Indian Territories or parts of America, not within the limits of either of the "said Provinces of Lower or Upper Canada, or of any Civil Government of the "United State of America, shall and be deemed to be Offences of the same nature, "and shall be tried in the same manner and subject to the same Punishment as if the "same had been committed within the Province of Lower or Upper Canada."

And whereas under and by virtue of the above in part recited Statute, Justices of the Peace have been duly nominated and appointed with power and authority to apprehend within the Indian Territories aforesaid, and to convey to this Province of Lower Canada for trial, all and every person and persons guilty of any crime or offence whatever :

And whereas there is reason to believe that divers breaches of the Peace, by acts of force and violence have lately been committed within the aforesaid Indian Territories, and jurisdiction of the aforesaid Justices of the Peace :

I have therefore thought fit, and by with the advice of His Majesty's Executive Council, of and for the Province of Lower Canada, to issue this Proclamation, for the purpose of bringing to punishment all persons who may have been or shall be guilty of any such act or acts of force or violence as aforesaid, or other crime and offence whatever, and to deter all others from following their pernicious example, thereby requiring all His Majesty's subjects and others within the said Indian Territories, to avoid and to discourage all acts of force and violence whatsoever, and all



proceedings whatever tending to produce tumults and riots, or in any way to disturb the public peace.

And I do hereby strictly charge and command all Justices of the Peace so aforesaid nominated and appointed under and by virtue of the above-mentioned Statute, and all Magistrates throughout this Province, and do require all others of His Majesty's subjects generally in their several and respective stations to make diligent enquiry and search to discover, apprehend and commit, or cause to be committed to lawful custody for trial, in due course of Law, pursuant to the provisions of the above-mentioned Statute contained, all persons who have been, or shall be guilty of any act or acts of force or violence as aforesaid, or of any other crime or crimes offence and offences within the said Indian Territories, to the end that the laws may be carried into prompt execution, against all such offenders, for the preservation of peace and good order therein.

Given under my Hand and Seal at Arms, at the Castle of St. Lewis, in the City of Quebec, in the said Province of Lower Canada, this Sixteenth Day of July, in the Year of Our Lord One Thousand Eight Hundred and Sixteen, and in the Fifty-sixth Year of His Majesty's Reign.

J. C. SHERBROOKE.

By His Excellency's Command.

JOHN TAYLOR,

*Deputy Secretary.*

*By the Chairman :*

607. This is a very important document, because it shows clearly that the Provinces exercised jurisdiction under the Act of 1803, in the Indian territories where those troubles were taking place.

*By Mr. Mousseau :*

608. Where was that document deposited?—I got it from an Indian Chief called Henry Prince, who lives down on the shores of Lake Winnipeg, and it was given to him by his father.

*By Mr. Ouimet :*

609. What meaning would you attach to the word "northward," used in the Quebec Act, as the direction in which the western boundary of the Province should run?—As a professional man, running a line or determining a boundary of that description as given in that Act, there is no other meaning I could put upon it but due north.

*By Mr. DeCosmos :*

610. Why?—Because, if anything else had been used in connection with it, such as north-east or north-west, it would define that the line tended either to the east slightly or to the west slightly, but it says distinctly northward, and it distinctly defines, in the opinion of a surveyor, that no other meaning can be attached to it except a due north direct line.

*By Mr. Ouimet :*

611. Can you point out on the map at what point of a boundary between the United States and Canada would this due north line strike?—A true meridional line drawn from the junction of the Mississippi and Ohio, would pass through Lake Superior, cutting the south-westerly portion of Isle Royale, intersecting the international boundary in the sound between Isle Royale and the mainland, thence across Thunder Bay, a little to the east of Prince Arthur's Landing, running northward, then northward a little to the west of Lake Nipigon, and thence still northward to the height of land, or the southern boundary of the Hudson's Bay Company's Territories as shown on Devine's map of part of North America, dated 1878.

612. Does the line you have drawn as your interpretation of that due north line pass on the same boundary as that presumed to exist before the award of 1878? Certainly, as by the Quebec Act.

*By Mr. Weldon :*

613 You treat the word "northward" as the direction of a line not referring to the location?—Yes, as a boundary line.

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SATURDAY, 10th April, 1880.

The Committee met at 11.30 a.m. Mr. Dawson in the chair.

P. L. MORIN called and examined :

614. I was formerly director of the Cadastral Office at Quebec, and am now a Crown Lands officer. I beg to hand the Committee a copy of the original map of Varennes de la Verandrye, the first discoverer of the Rocky Mountains. I made this copy from the original at Paris.

*By the Chairman :*

615. I suppose your professional duties have made you acquainted with maps?—Yes; I have had a good deal to do with maps.

616. Can you tell us anything about the country lying between Lake Superior and Hudson's Bay?—This map of Mitchell's, to which you refer me, does not appear to be correct, according to the maps I have copied at Paris. It puts the territorial line of Hudson's Bay farther south.

617. You observe in this map of Mitchell's that the rivers are made continuous from Lake Superior to Hudson's Bay.—That arises from an error in lithographing; anyone can see where the height of land passes.

*By Mr. Trow :*

618. Were you employed by the Government to secure these papers?—Yes.

619. Under what circumstances?—They wanted to know about the affairs of the country and they sent me to Paris, two years ago.

620. Have you been employed in that section of the country?—Yes; I travelled from York, on Hudson's Bay, by way of Lake Winnipeg and Rainy River. This memorandum contains an account of my journey and my impressions in respect to the country.

(Witness handed in his memorandum, but it does not bear on the subject of the boundaries.)

621. What were these lines drawn for on this map which you have handed in?—The one represents the line claimed by the French after the Treaty of Utrecht; the other, the line insisted on by the English. The latter, being near the water-shed, seems the most natural.

622. The French Commissioners wanted this and the English the other line?—The English made this line, thinking it the height of land. The spirit of the treaty is to go to the height of land.

*By Mr. Royal :*

623. Here is Mitchell's original map, published in England. Looking at the rivers as laid down on it, you cannot tell which way they run; they are all joined together. How do you account for that?—It is simply an error of the lithographers. He has marked the heights of land, which you can easily trace. Looking at that map, no one would suppose that the Lake of the Woods or Lake Winnipeg sent their waters south to Lake Superior, but north to Hudson's Bay, as they really do.

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14th April, 1880.

The Committee met at 11 o'clock. Mr. Dawson in the chair.

The Hon. Mr. Justice Ramsay, Judge of the Court of Queen's Bench, examined :

*By the Chairman :*

624. You have made investigations into the matter of the boundaries between the organized territories of the Dominion and the Province of Ontario?—In 1878,



before I was appointed a Judge of the Court of Queen's Bench and after I had been temporarily a Judge of the Superior Court, I was entrusted by the Government with the duty of reporting on the subject. I made a report, and my report was printed and confidentially circulated to a certain extent. I do not know whether it has come under your notice.

625. We have a copy of it.—That report contains in substance all I have really to say on the matter; but, of course, a report of that kind is only an opinion and may be open to attack. I shall therefore be glad to answer any questions that may be put to me that may seem to shake the ground I have taken. I may say that the result I have arrived at is to be found in a few words at the end of my report, as follows:—“The limits of Ontario are therefore to the east, the Province of Quebec; to the north “the southern boundary of the Hudson's Bay Territory shown to be the height of “land dividing the waters which fall into Hudson's Bay from those which fall into “the St. Lawrence and the great lakes; to the south, the northern boundary of “the United States and longitude 89° 9' 27" west of Greenwich to the west.” That is the geographical determination of the line which is referred to as the meridian passing through the junction of the Ohio and Mississippi Rivers.

626. Are you still of the same opinion?—I see nothing to shake that opinion; I have not followed all the literature on the subject since I made my report, because I have had another occupation; but I have seen nothing to shake my opinion. Lately the Secretary of the Government of Ontario was kind enough to send me a printed copy of the correspondence between the Dominion Government and that of Ontario in which the latter urged the carrying out of the award, and from what I saw in that it does not appear to me that the Government of Ontario has taken any ground that had escaped my notice, when I dealt with the subject.

627. There did not appear to you to be any argument advanced by Ontario that would shake your view?—No. Some other arguments may have escaped me, for I have not followed the literature which has appeared on the subject since my report was written very closely, and my opinion has not the value as a judicial opinion. There may have been arguments which have escaped me, but I am not aware of any. If the Committee pleases I shall be glad to give in general terms the reason for the view I take.

628. There is one point which seems to have been used as an argument, and that is the proclamation by General Clarke in 1791, in which, after describing the division line between the two Provinces, he says: “to the utmost bounds of the country known as Canada.” On that ground it has been contended that Upper Canada should extend to the extreme limits of the country known as Canada?—That question, of course, as a historical question on a geographical question is of great interest, but it does not appear to me to be of any practical value after the legislation that took place prior to that proclamation. There is a remark made by Garneau in his history, which was, of course, written without any idea of limiting the boundaries of old Canada, because his history, though by no means untrustworthy, has a strong natural bias, to the effect that what they called Canada in those days was a country they really did not know the extent of. The valley of the St. Lawrence was not really known when they were talking of Canada stretching to Hudson's Bay and in all directions. The practical view of the matter is this: what was the legislation prior to this proclamation of Alured Clarke? I think the Statute of 1774, commonly called the Quebec Act, establishes what was to be Canada as understood by the Government of Great Britain. At the time there were no hostile interests and no local Governments, and what they intended to be Canada was the country that was laid down in the Act as such.

629. They called it the Province of Quebec?—Yes, the Province of Quebec. Then when the Constitutional Act came in 1791, and the country was no longer to be governed in any sense as a Crown colony, but by Parliaments, the division took place. As it has been remarked, very properly, by Chief Justice Sewell, the intention of the Act of 1791 was not to extend the limits of Canada, but to divide what had already been declared by the Act of 1774 to constitute the Province of Quebec.

hold it is undeniable law, that if the Act of 1774 is clear as to what the limits of Canada should be, and if the Act of 1791 does not interfere with that legislation so far as the boundaries of Quebec are concerned, no proclamation, no commission, in fact, nothing but an Act of Parliament can possibly affect the question.

*By Mr. Weldon :*

630. Then the royal prerogative could not extend the boundaries of a colony?—No; for instance, the Government of the Dominion of Canada, at the present day, could doubtless authorize the Governor of Manitoba to govern the territories beyond that Province, but the Government could not extend the Province; that can only be done by an Act of Parliament.

*By Mr. Royal :*

631. They could not extend the Province by a commission?—No.

*By Mr. Mousseau :*

632. Nor by proclamation?—No; the boundary of a Province being fixed by Act of Parliament, can only be extended by Act of Parliament. That is the view I take, and therefore I do not think the western boundary question, as a legal question, offers any difficulty at all. The fact that the Act of 1791 did not interfere with the Act of 1774 in respect of boundaries being admitted, it seems to me the conclusion is inevitable. Therefore, though it said that Ontario might make an equitable claim to more than it legally has—a view which might be worthy the consideration of the Government if it was going to legislate on the subject—still I think the legal fact, as to the boundary, is clear.

*By Mr. Royal :*

633. Did you arrive at that conclusion after reading both the Imperial Acts of 1803 and 1821?—I looked at those Acts. That Act of 1803 is rather an inferential Act than direct legislation. It provides for the administration of justice in what is not Canada. It is a negative form of arriving at a conclusion. The positive legislation is to be found in the Act of 1774.

634. The Act of 1821 refers to the Indian territories described in the Imperial Act of 1803, as lying to the north and west of the Province of Upper Canada?—Well, when you come to be precise, that is really nothing; you must go back to the previous Act.

635. No, of course; but you read all these Acts together?—There was something outside of the Province of Quebec that had to be dealt with, so that justice might be administered; but that Act does not purpose to give a direct title, it only affects the title inferentially. The decision in the Reinhardt case appears to me to be a great authority, as being a decision of a court of justice when the question was fully raised and argued, in a matter of life and death.

*By Mr. Weldon :*

636. Was there not an adverse judgment in Ontario?—I think there was another case, but I do not remember the details.

637. It would appear nothing was done to De Reinhardt. He was not executed and was subsequently released. Are you aware whether the matter was referred to the Crown officers in England?—I am not. If I may venture to criticise the decision in a case presided over by a Judge so eminent as Chief Justice Sewell, I think it is possible there was room to say it was manslaughter and not murder. I am not aware that that had any influence as to the pardon. The jury held the offence was murder, but the circumstances and the time under which it was committed may have possibly influenced the Executive.

*By Mr. Royal :*

638. I suppose there was a private war between the rival Companies?—I suppose Lord Selkirk and his adversaries had introduced something of the sort.

*By Mr. Trow :*

639. Are not the powers of the Executive more definite at present than during those days? Were they not more arbitrary then than now?—Possibly, but I do not know that the theory of the law is changed on the subject. I think the King was subject to the law in those days as at present.



640. But at the same time large territories were given by the King without the consent of Parliament?—Yes, in unsettled territories, but never after it had been legislated upon. After territory has been once legislated upon, the King's power to treat it as a Crown colony ceased entirely.

*By Mr. Robinson :*

641. You have never known an instance when any proclamation has interfered with the Statute?—The Statute was evidently not followed in the proclamation referred to.

*By Mr. Weldon :*

642. The commission issued immediately after the Quebec Act to Governor Sir Guy Carleton carried the western boundary to the Mississippi. The question is: Could that alter the Act of Parliament?—I think it could not.

*By Mr. Ross :*

643. That Act of Parliament, to which reference is made, is the Quebec Act of 1774. Is it possible that the commissions to Sir Guy Carleton and others would be merely interpretations of that Act, made at a time when the Act was fresh and the intention of the Act present to the minds of those who were then interpreting it?—Well, not having lived in those days, I cannot speak of the feeling then existing, but now-a-days that would be looked upon as rather a heresy.

644. You will observe the Quebec Act of 1774 says: "Along the bank of the said river westward to the banks of the Mississippi and northward to the southern boundary of the territory granted to the merchants adventurers, &c."?—Northward must mean a straight line.

645. That is the point in dispute. The whole force of your opinion lies in the interpretation to be put on the word northward. The proclamation of Clarke quotes that same language, refers to that same boundary. What reason have you for saying that northward to the southern boundary of the territory granted, &c., means a direct north line?—A line is that which lies between two points. It does not mean a crooked line. It cannot run between two points unless it is a straight line; consequently, the answer is mathematical, the line defined is a due north line.

*By Mr. Weldon :*

646. Could not the word northward be applied to location?—Yes, if there were other words to qualify it, but not otherwise.

*By Mr. Trow :*

647. Was not the intention to include certain settlements that a northern line would not have included?—I cannot think so from the expression. You use intention in a manner that leads necessarily to some explanation. Intention can only be gathered from words in a Statute. If the words are clear you must take them as they are. If they are not clear, then what is meant by ambiguous words may be interpreted. But nobody has the right to interpret the positive words of a Statute.

*By Mr. Weldon :*

648. Might not the word northward being possibly applied to location as well as direction, have sufficient ambiguity. There was then no local jealousy about the line. Is it not a fact that Burke watched with great jealousy that southern line so as not to interfere with the State of New York?—That was for another interest not that *en jeu* at present.

649. Is not the Quebec Act intended more to define the southern line which is defined with great accuracy?—You know the difficulty was as to what had been French and what was English, and that explains Burke's interest in the question, but the principal object of the Act was to provide for the Province of Quebec.

650. You see the Act as it came from the House of Lords, was materially altered in the House of Commons apparently under the direction of Mr. Burke, to leave no doubt as to the dividing line between the State of New York and Canada?—No doubt of that, but you will observe that the southern line does not affect the present question, and consequently one need not embarrass oneself in arriving at a conclusion about the description of the bank of the river in the Statute. Arriving at the junction of the Ohio and the Mississippi, if I am correct in my opinion that northward meant a

direct line north to the division between the southern boundary of the Hudson's Bay Territory and the northern boundary of Canada, all description by the bank of the river ceases.

651. That would have the effect of throwing all the settlements on the banks of the Mississippi, outside of the jurisdiction of Quebec?—

*By Mr. Ross :*

652. The preamble of the Act of 1774 says : " And whereas, by the arrangements made by the said royal proclamation, a very large extent of country, within which there were several colonies and settlements of the subjects of France, who claimed to remain therein under the faith of the said treaty, was left without any provision being made for the administration of civil government therein." This Act goes on to describe what was intended to be the boundary of that country. Then, taking a line due northwards, the very purpose for which the Act was framed would be defeated, because we have information to show that there were settlements along the Mississippi, containing some 2,500 people, which would be excluded under the interpretation due north?—Any straight line almost that you can conceive from the junction of the Ohio and Mississippi, to the northern boundary, would have excluded them.

*By Mr. Weldon :*

653. If the word northward is used in the sense of location, it would include the lands to the north of the line along the banks of the Mississippi?—You are supplying, instead of precise words, a gloze on the Statute.

654. " And along the banks of the said river westward by the banks of the Mississippi." Of course, the word westward is governed by the banks?—There is no doubt it follows the banks of the Ohio until you reach the junction of the two rivers.

655. " To the banks of the Mississippi, and northward to the southern boundary of the territory granted, &c." The question is whether that does not mean northward along the banks of the river?—You mean to say following the course of the river?

656. Yes? I think you are putting an interpretation upon the Statute which never was put on it before, so far as I know.

*By the Chairman :*

657. Speaking of instructions and commissions to Governors as to their effect, we find an instruction to Lord Dorchester, on 22nd December, 1774, after the Act was passed, which is addressed to him as " Governor-in-Chief in and for our Province of Quebec, and of all our territories dependent thereon." As we go on through this instruction, we find it speaks of outside territories, also of interior countries for which he has to provide governments. This, taken in connection with the Act, would seem to show that his government extended beyond the bounds of the Province of Quebec, and that he had to provide a way of governing the different territories outside?—The Governors General have always been Governors General of the whole of British North America. You will find that running through the whole of the commissions to Governors General. They have never been named for Canada alone.

658. In regard to the Quebec Act it says : " Certain territories are hereby, during His Majesty's pleasure, annexed to and made part and parcel of the Province of Quebec." Could we not infer from that he might curtail but could not extend?—These are differential words. But they really do not apply to anything that can affect the question before the Committee. If a country has been once created and organized as a portion of the British empire and ceases to be a Crown colony, it must be governed by its Statutes—nothing can dispense with them.

659. You would look within the four corners of the Act itself for its meaning, unless the words were ambiguous?—Yes; and if the words are ambiguous, the effect given to them in judicial proceedings by the Executive or by practice may help to interpret them, but unless they are ambiguous they may be taken as they are.

*By Mr. Weldon :*

660. If, then, there could be ambiguity as to whether northward might be location or direct line, would not commissions issued immediately upon it to Sir Guy Carleton and Haldimand be used to interpret it?—Yes; they might be used to interpret it. You will observe, if you think it worth while to look at my report, a



memorandum in which, after having arrived at an absolute conclusion, what I believe to be the legal conclusion, I state that *de facto* the exercise of the Government extended a little beyond that line, and that I thought, perhaps, if they were legislating upon it, the Government could give to Upper Canada what it had *de facto* held.

*By Mr. Ross:*

661. What I understood to be the point of Mr. Weldon's question was that in your statement you said that the Executive might interpret the Act according to the commission given to Sir Guy Carleton in the year the Act was passed, defining the northern boundary to mean "north along the western banks of the said Mississippi River to the northern boundary of the territories granted to the Merchant Adventurers of England." In the light of that fact that this commission may interpret the Act, is it not to your mind pretty strong evidence that northward does mean along the banks of the Mississippi?—I cannot say so. I do not think the Statute is ambiguous, and if the Statute were ambiguous the exact weight you are to give a fact of that sort as a rule of interpretation is a thing so very delicate that really I cannot give an abstract opinion upon it. It must be decided in each special case. For instance, if a question comes before a court of justice as to whether the B. N. A. Act is to be interpreted in one sense or another, I think that the interpretation might and probably would be affected by what both the Local Legislature and the Dominion might have considered the Act to mean if it was not clearly contrary to the statute.

*By Mr. Weldon:*

662. Your opinion is that there is no ambiguity in the Quebec Act; therefore you construe it by itself?—I state that, as an opinion, and you will excuse me if I say that the shape in which the questions have been put to me has not shaken that view.

*By the Chairman:*

663. I suppose that a commission issued forty or forty-five years ago upon the same authority as a commission issued ninety years ago, would have equal weight. Forty years ago there were commissions issued to Lord Durham and a succession of Governors which described the western boundary as simply running into Lake Superior, and not going beyond that. That would put it as far east of the due north line as former commissions have west. Of those commissions, which would you take to guide you?—If you use external facts of that description as a means of interpretation, you must use them with great care; I cannot say more. It is almost impossible for me to give a rule for this kind of interpretation. It becomes discretionary, and words almost fail to describe the process by which a person having to perform an act of a judicial character would arrive at a conclusion on such a point.

664. Another point we were considering was the northern boundary of the provinces. The instructions to Governors in describing the dividing line always say "from the head of Lake Temiscaming due north to the boundary line of "Hudson's Bay." Some claim that the word boundary as there used means the shores of the Bay, and others that it simply means the liminary line of the territory as expressed in Chief Justice Sewell's judgment. I believe you have formed an opinion on this northern boundary question?—Now I think you are getting on ground much more difficult than the other. I think the western boundary is very clearly defined, and leaves very little room for doubt; but with regard to the northern boundary, you get into an historical argument of considerable difficulty. I may, however, say that I arrived at a conclusion when I made the report that the height of land, the water-shed of the St. Lawrence and the Hudson's Bay, was really the line that must be practically adopted. That is more a question of argument and inference than of the direct interpretation of a Statute. If the Committee desires it, I will mention the ground upon which I go. I started from the Charter to the Merchants Adventurers, dated 2nd May, 1670. That charter included, as the Committee will remember, all the lands that were not held by any other Christian Prince or State, etc. Well, what did that mean, and what does that generally mean in grants? Unless there is something really to show a limitation of another character, the grant has always been held to extend to the water-shed, and for this very simple reason I hold it. The rivers

are the sole means of communication through a wild country of that kind; you cannot travel through forests nor over mountains, consequently travellers follow the water-courses, and, therefore, as you cannot have a grant of water you have never seen, and of what you have no means of access to, these water-sheds or terminations of the water-courses have generally been considered the limits of the grant. I will give you an instance in which that occurred. It is a treaty, perhaps, which may be subject to some criticism, because I believe the arbitration was afterwards set aside. But in arguing the matter, the King of the Netherlands and the arbitrators, who were eminent jurist consults, spoke distinctly of the water-shed as being the course; and the height of land means the water-shed.

*By Mr. Trow :*

665. The water-shed might extend inland thousands of miles?—Of course there are limits to it. When other territories are occupied by other people and there is an adverse possession, it is limited; when a State occupied the mouth of a river by right of discovery, it generally claimed the whole valley of the river.

*By Mr. Weldon :*

666. That doctrine was held by France more than by England?—Well, France was the adverse possessor. What England contended will finally bind England, but if you take the other view, that France was really the *legitime contradicteur*, the adverse possessor, if she took that view she would limit herself to the water-shed, but she did not take that view exactly in relation to Hudson's Bay. The argument then becomes very much involved. I went through the whole of their pretensions with very great care, and I arrived at the conclusion, that the claim of the English to the discovery of Hudson's Bay was admitted by the French themselves, and its extent and significance was only denied when they found that ships had been trading to Hudson's Bay and that the grant to the Merchant Adventurers had been made. Fifteen years afterwards they created a company themselves to counteract the influence of the Hudson's Bay Company; and had the French been as successful in Europe as they were in the north, we should probably have been driven out of these possessions altogether. I cannot give you details of all these pretensions and voyages from memory, but can hand you my report.

(Report handed in.)

*By Mr. Weldon :*

667. The French at a very early period had posts or trading forts at the mouth of the Albany River, had they not?—I think not. I think they failed to prove that. It is said that one man went to Hudson's Bay, but in the diary of the Jesuits I found the Jesuit who wrote it said this man said he had been there, but never went further than a certain point north, and turned back. I cannot find anywhere a settlement by the French, according to any system whereby they might have taken possession of the country. You are aware there has been some controversy as to what constitutes taking possession, whether it is merely going to a place or taking possession in a formal name, such as by planting a flag. If it is by going there first, we went there before the French, and if you say it is by planting a flag or doing some other formal act of possession, we also had the first.

*By Mr. Robinson :*

668. Was there not an expedition by the French to take possession of the forts at Hudson's Bay at an early period, founded on the allegation that they were the first discoverers?—Yes; they made a very early expedition there. Iberville made several most successful expeditions. On one he went up the Saugenay, I think, and took almost all the forts from the English, but the French pretensions were, however, practically abandoned in the Treaty of Utrecht, and under the Treaty of Paris they were again abandoned, and the grant to the Hudson's Bay Company was relieved of the French claim. The English pretention then became paramount.

*By Mr. Weldon :*

669. The clause in the Treaty of Utrecht, 10th Article, which mentions "all lands, etc. at present possessed by the subjects of France, shall be restored,"—would not that infer there were then tracts of land possessed by subjects of France?—That



was left for the Commissioners to decide. It was left doubtful in that way, because when people make a treaty they must necessarily put the thing in such a way as to make it to some extent acceptable to both, otherwise you would never have a treaty. The English did not care whether it was doubtful or not so long as they could keep what they had got.

670. In one of the French expeditions to Hudson's Bay they obtained, in the neighborhood of Rupert River, a treaty by which the Indians surrendered that land to them?—No; I do not recollect whether they did. There were frequent claims of acquisition from natives, but treaties alone of that sort do not avail much.

*By Mr. Royal :*

671. You say in your report: "A difficulty having arisen as to what are the true western and northern boundaries of Ontario, and the question having been referred to me for my opinion, I beg leave to report the result of my investigations." Did you understand your instructions required you to make only a one-sided, or a general report on the various contentions?—I was asked to give my opinion, a legal opinion, on the subject. I had the contentions of both parties before me, but I had no special instructions or any hint that it was desirable the report should be one way or the other. Of course I knew the Dominion pretended one thing and Ontario another.

*By Mr. Ross :*

672. You did not act as a solicitor for the Dominion?—Certainly not. I would not have taken such a position. I had not even an idea as to what the opinion of the then Minister of Justice was on the subject.

TUESDAY, 20th April, 1880

The Committee met at 11 o'clock; Mr. DAWSON in the Chair.

Hon. WM. McDougall, C.B., M.P., examined :—

*By the Chairman :*

673. We have been looking into the Act of 1774, and into commissions to Governors, and would be glad to have any information you can give on the subject now before this Committee?—As I understand it, you are only taking the opinions and impressions with respect to these points, of public men like myself.

674. We shall take whatever you choose to give us. We have not limited the witnesses to any strict line?—I have simply to say to the Committee, as a public man, looking at the object of the Committee and its labors, as I understand them, that I have no evidence to give as to any matter prior to my appointment as Commissioner by the Ontario Government in 1871. What I know with respect to the matter is simply what you or any one else may know, but having examined the question with some care, especially when charged with the duty on behalf of Ontario, to make search into, and to collect the evidence as to its boundaries, I have formed a very strong opinion on this subject, and all the information I can give you, as to the results of my enquiries and the conclusions at which I have arrived, as a lawyer making researches into the question, I will give you. That really is all my evidence would be worth. It is a mere matter of opinion, and I have no objection, if there are any special points on which the Committee think, after this account of my connection with the case, I will be able to throw any light, I shall gladly do so, but I do not wish to be regarded as a witness to any material facts in the antecedent history of the case. I am not personally cognizant of them.

*By Mr. Trow :*

675. The object of the Act was to include those settlements in Illinois?—Yes.

676. A due north line would not have included them?—No.

*By Mr. Mousseau :*

677. Do you assume the intention of the Act of 1774 was to include the un-organized territories?—The object of the Act was first to enlarge the Province of Quebec, which did not then include the French settlements in the western territory. Lord North, who carried the Act through Parliament, was the framer of it, and the responsible Minister, declared in his speech, which you will find reported in the Cavendish debates, the object to be to include these settlements in the Illinois country. If you look at the maps of that time, you will find the Illinois country is east of, and abuts on the Mississippi River, and is north of the Ohio River. It is capable of proof that the French trading posts and settlements had extended into all the country north of the Ohio towards the sources of the Mississippi long before the cession in 1763. It was the intention of the Imperial Government, and is so declared in the preamble of the Act of 1774, to include those posts within the Province of Quebec in order to bring them under organized Government.

*By Mr. Trow :*

678. Those Cavendish papers were looked upon as good authority, were they not?—Certainly. At that period it was contrary to the rule of Parliament to allow reporters at its sittings, but Sir Henry Cavendish, as is known from contemporaneous history, was, a very shrewd, quiet, observing member of the House, and he had a system of short-hand in which he took the discussions with remarkable facility and completeness. His reports in manuscript were discovered in the British Museum among what were called the Egerton manuscripts. The report on the Quebec Bill was published in 1839. There is no reason to doubt that Sir Henry Cavendish was an impartial reporter, who took his notes fairly. They were published by the Government printers in a separate volume, when the Union Act of 1840 was under discussion as being of interest. I have no doubt they were read with very great interest at that time. The historian of the future will regard them with respect as a record of authority. No doubt is entertained in England of their genuineness.

679. They have been considered an authority in other cases?—When I say authority, I mean the authority that such reports of discussions in Parliaments even now have. We do not regard *Hansard* as a conclusive authority in a court of law to prove a fact, even the fact that a particular person may have spoken, because there might be a mistake in the name. I do not wish to say, as a lawyer, that the Cavendish debates are like a certified copy of an original document, but they are an historical authority. We have no reason to suppose that he made those reports for any improper purpose, or that he had any object to serve in giving one view rather than another. I take it as a fair account of the discussion that took place in the House of Commons on that subject, and as throwing light upon the meaning of this doubtful word "northward" in the Act. Upon that point I would like to say, that since the discussion in the House, in which I mentioned the doctrine that is applicable to a case of this kind, according to the decisions of courts in modern times, I have taken pains to look into the authorities as to the habit of judges and courts, even in England, of looking into discussions in Parliament and reports of commissions, for the purpose of finding an explanation of any doubtful phrase or word in an Act of Parliament. There is a recent case, which you will find reported in the *London Times* of 14th January last, which is very much in point. I think it is the South-Eastern Railway Company against the Railway Commissioners. In this case, Chief Justice Cockburn, our highest legal authority in point of rank, refers to what Lord Campbell said in the House of Lords, as explanatory of the meaning of the word "facilities," in the Railway Act of 1854. He refers to the statements of Lord Campbell in the House of Lords, as defining or explaining the object of the Act; and he refers also to the history of the time to ascertain the intention of Parliament. This he collects, not from the language of the Act alone, but from surrounding circumstances. I apply the same doctrine in this case, and I say the surrounding circumstances, the historical facts to which we have access, all go to show that the intention and object of the Imperial authorities was to extend Quebec so as to reach the Mississippi River. That is the conclusion I have come to, without any doubt as to its correctness, on that point. It is easy



to show, as a matter of argument, the unreasonableness of any other conclusion, assuming that the Mississippi was then the boundary between England and France in that region. If the words of the description in the Act, as introduced in the House of Lords, had not been altered at Burke's suggestion, you would have gone along "the banks of the Mississippi River" to its source, which is at or near the 95th meridian. [Mr. McDougall explained by reference to a map, that a "due north" line would have left a strip of territory between the meridian of the mouth of the Ohio and the upper Mississippi without civil Government of any kind, though containing French posts and settlements. He could not imagine that Parliament intended to defeat *protanto* the declared object of its legislation.]

*By the Chairman :*

680. We have discovered some instructions to Governors which are not in the Ontario volumes, and among these a document under the Great Seal, addressed as follows: "Instructions to our trusty and well-beloved Guy Carleton, Esq., our Captain-General and Governor-in-Chief in and over our Province of Quebec in America, and of all our "*Territories dependent thereupon.*" In the details of these instructions he is directed to provide for the Government of outside territories to regulate the fur trade of the interior country and so forth. So that there were countries to be governed beyond the limits of the enlarged Province of Quebec, and might not the Illinois and the country on the Mississippi have been among these?—I do not object to your drawing an inference of that sort, but that reference to an interior country cannot over-ride the positive evidence as to the boundary of Quebec, in my judgment.

*By Mr. Ouimet :*

681. Supposing that we knew nothing about these debates or these surrounding circumstances of the passing of the Act, would you have any difficulty in defining the boundary by taking the word "northward" to mean due north to the Hudson's Bay territory?—Yes. In the first place, I take the use of the word "northward" in the Act to mean something different from due north, or they would have used the words "due north." The draughtsman would have done that, had he meant "due north."

*By Mr. Trow :*

682. In the same description giving the western boundary, do they not use the words "due west"?—I think so, and that is the difficulty I see in the interpretation suggested, namely, that it is contrary to the ordinary practice of surveyors and conveyancers, when defining boundaries, to use a word meaning the one side or the other, of a course, when they really intend a direct course. When a direct course is intended in International Treaties or Acts of Parliament, it is customary to take a parallel of latitude or a line of longitude, as the case may be, and if it had been the intention to take a geographical line, I contend they would have used words to express that intention. They have not done so. That is the first point. Now, as to evidence of intention and construction outside of the Cavendish debates, or other contemporaneous evidence which we have access to, my next point is that in the first issue of a proclamation or a commission, after the passing of that Act, the Government, which best understood its own intention, expressly mentions the Mississippi as the western boundary of Quebec.

*By Mr. Ouimet :*

683. You are alluding there to circumstances?—No; to official documents, as explaining the intention of the Government. The Government so understood the Act, because they issued a proclamation declaring the bank of the Mississippi to be the line, and they continued it for many years. These two things satisfied my mind as to the western boundary, and, I think, will satisfy any legal tribunal. The intention of the Government, as explained by the language of the Act, is confirmed by their own official acts and documents, and commissions and instructions to subsequent Governors.

684. Suppose there had been nothing else than the words, northwards to the Hudson's Bay territories, would not that language taken by itself, without any surrounding circumstances, mean a line northwards to the nearest point of those terri-

tories—not due north, but northward to the nearest point in the Hudson's Bay territories?—I admit that if we had that description before us, without anything to explain it, without anything defining the object for which it was drawn, but simply a bald statement on a piece of paper which we were asked to interpret, it would be difficult to deny your construction; but that is not the way in which either legislators or courts of justice find out the meaning of ambiguous expressions in an Act of Parliament.

685. Is it not the rule of interpretation, in respect to statutes, that when the language is precise, you have not to take into account surrounding circumstances. It is the rule of law I want you to give?—There is no need of summoning witnesses to lay down rules of interpretation, or to tell you what the rules of law are. We have only to go to the library, consult the authorities, and settle it at once. I do not set myself up as a judicial authority. I am only an ordinary lawyer and a member of Parliament. My belief is, not only that it has been the practice in cases of this kind, where the language is not precise—

686. Suppose that the language is precise?—If you want my opinion on a hypothetical case, I will give it to you. I would say that in the construction of statutes and legal documents, as well as ordinary writings, when the language is precise the meaning is precise, and you are not at liberty to put any other meaning upon it than that which is plainly expressed.

687. But a good many people think there is no doubt as to the language of the Statute, and that you have not to take into account all the surrounding circumstances of which you are speaking?—What does all this lead to. A select Committee is not a legal tribunal. I would like to dispose of one side of the question at a time. Let me add this: at the time (1774), I believe it was supposed in England—because I found maps in which the line was so drawn—that the Red River of the north was a continuation of the Mississippi. By some means, the Geographer to whom those manuscript maps were sent, seeing a river marked as running in the same general direction, thought it was a part of the Mississippi. You will find on these old maps that the Mississippi was supposed to take its rise in or near Lake Winnipeg. The conclusion I arrived at was that the maps, being imperfect, and there being nothing to indicate the course of the stream, it was assumed to be one river running in a southerly direction. They supposed, therefore, that in defining the Mississippi as the western boundary, it would carry us into the far north country, and would touch upon, or intersect with what was then supposed to be the southern limit of the Hudson Bay Company's territories. I state that as the result of my examination of the maps and other documents of that day.

*By the Chairman:*

688. Here is an interesting map by Verendrye, copied from a map of 1728, that was found in Paris. Here is Lake Winnipeg, and here Red River; you see how well they knew the geography and the height of land in those days. Of course, on some maps the water-shed may have been incorrect, but as a general rule it is wonderfully near to its right position?—I have seen a map which does not show so much of the lake, but which indicates the Mississippi as rising in a swampy country about 53° north latitude.

689. That is Mitchell's map, and the explanation a map-maker gave was that the error was a lithographic one easily detected?—And that was the map the Committee consulted in 1774.

*By Mr. Trow:*

690. Would the description "northward" carry the boundary to the west end of the Lake of the Woods?—If we are using that description for any purpose of the present day, we must take the river where it runs, not where it is assumed to run on the maps. We must follow this natural boundary where we find it on the ground, not where surveyors or explorers may have assumed it to be. When we get to the most northerly and westerly waters of the Mississippi we have no natural objects to indicate the course we are to go. Then I assume a court of law would hold that you must go due north until you reach the object at which you are aiming, the southern



boundary of the Hudson's Bay Territories. A line drawn from Lake Itasca, or Turtle Lake, towards Hudson's Bay, will pass near the north-west angle of the Lake of the Woods, the international boundary at that point. We find that when this country was better known, and when this portion of it up to Lake Superior, *via* Pigeon River, was surrendered or transferred to the United States, the Imperial authorities defined the boundary of Quebec (then called Upper Canada) as running along the international line until it reached the north-west angle of the Lake of the Woods. There was another distance, viz., "due west to the Mississippi," which must now be abandoned. We find that in the commissions and instructions to Governors. I infer that the construction I have given was the intention of the Imperial authorities of that day; it was their interpretation of the meaning of the Act, and is now the boundary of Ontario in that direction. So we get to the north-west angle of the Lake of the Woods.

*By the Chairman :*

691. Of course, you are aware that if the western boundary was carried to the north-west angle of the Lake of the Woods it would run into the old colony of Assiniboia, which, to a certain extent, had been recognized by the Imperial authorities. If you look at the commission of Lord Dorchester, in 1786, you will find it carried the line to the north-west angle of the Lake of the Woods, and thence west to the Mississippi?—They assumed the Mississippi was west of that point.

692. That commission was revoked and we have a commission in 1838 to Lord Durham, and from that time forward half-a-dozen commissions carrying the boundary simply into Lake Superior, not one whit further, and those descriptions are very minute. Would you not think that these commissions are equally weighty with the former ones?—They are of equal weight for the purpose for which they were issued, but if the King or Parliament had defined interprovincial boundaries by a solemn Act, no subsequent omission of a word or a course in a commission would change it. It is well to bear in mind throughout this enquiry that it was a prerogative of the Crown to fix boundaries, and had always been recognized as such in England. You will find a striking confirmation of this in the Act of 1791, passed subsequently to this Act. The Imperial Parliament did not even then presume to define the boundaries of the new Provinces, but left that to the prerogative action of the Crown. The Act of 1774 was also subject to the operation of the prerogative, because the boundaries mentioned were only to continue "during His Majesty's pleasure." So that if His Majesty afterwards, for any purpose of State, desired to alter those boundaries, he had absolute authority to do so. But I take it that those subsequent commissions, when they landed the Governor's authority in Lake Superior, did not mean it should stop there. I presume it was a mere clerical abbreviation of the older commissions. From 1774 down to 1838, or for more than half a century, there is a continuous stream of official proof to show that the prerogative right or authority of the Crown had been exercised and continued to be exercised in favor of the boundary I have just been pointing out.

693. With respect to the northern boundary, the commissions to Governors say a line drawn due north from Lake Temiscaming to the boundary line of Hudson's Bay. Do you conceive that to mean the shore of Hudson's Bay, or that it means some territorial boundary line inland from the shore?—In answer to that question, I will say: In the first place, I have a very strong impression, from an examination of that part of the case, that originally the word "territories" was omitted by a clerical error. I think that the Government of 1774, and the Attorney-General whose duty it was to prepare those descriptions, could not have been ignorant of the fact that there was a country about Hudson's Bay that had already been granted to the company of adventurers called the Hudson's Bay Company. That fact was within the knowledge of the English officials in all the Departments, because it had been the subject of frequent discussion, and even of wars in which the territorial rights of those people were involved. Therefore, we must assume they were equally aware that a portion of the country south of Hudson's Bay continued under the control of the Hudson Bay Company. My impression is that the intention was to carry the boundary line between Upper

and Lower Canada to Lake Temiscaming, and thence north to the boundary line of the Hudson Bay Company's territories, or, in other words, to the southern boundary of Rupert's Land, as it was called in those days. I think that must have been the intention, but it was not carried out, because I took occasion on my visit to England in 1869 to trace it to its source. I first examined the books of the Colonial Department to ascertain whether this was not a clerical error, in copying that description, by an omission of the word "territories," and in the books of the Colonial Office, from which our copies were probably taken, the word "territories" was not to be found. I asked the officer in charge from what source this copy was made, and where I would find the original. He said, "You will probably find it among the papers in charge of Sir Arthur Helps, Clerk of the Privy Council. He will show you the original fiat of the Attorney-General. That is the authority from which the description emanated. All subsequent descriptions should correspond with that, unless a mistake occurred in the first copy of that document." I immediately went to Downing Street and saw Sir Arthur Helps, whom I had previously met, and told him my object. He set an officer to work, and in a very few minutes, showing the great accuracy and skill with which these things are managed in that Department, he brought down a bundle of old documents with the dust of years upon them, in which the Attorney-General's fiat, containing the description, with other papers relating to the matter, were found. With a good deal of anxiety, I waited till this was unfolded, and we saw the endorsement "fiat." I opened it and read the description; it was "to the boundary line of Hudson's Bay." I had traced the matter to its source, but still I believe it was a mistake. It was not the intention of the Government to ignore the proprietary rights of the Company on the shores of Hudson's Bay; it was an error of the Attorney-General, who, being human, in those days, as well as in these, was liable to err. But if an error at first, it has been followed and confirmed, because, at a subsequent period, the language of the commissions was changed so as to remove all ambiguity by carrying the boundary to the "*shores* of Hudson's Bay."

*Chairman* :—The same commissions which ran the line simply into Lake Superior. The commission to Lord Elgin, thirty-four years ago, says to the shore of Hudson's Bay on the north, but only "into" Lake Superior on the west.

*By Mr. Trow* :

694. Did not the Hudson's Bay Company, after the amalgamation with the North-West Company, extend their limits by usurpation almost indefinitely east, and draw maps accordingly?—Well, the Hudson's Bay Company, of course, endeavoured to make out, of late years, especially, when the question of the validity of their charter and the extent of their territory was raised in Canada, that they had always claimed and exercised authority over the greater part of the North-West. They invented, or at all events adopted, this doctrine that their territory, under the terms of their charter, extended to the sources of the streams emptying into Hudson's Bay. There was a great deal to be said in favor of that view, and some lawyers gave that interpretation to the terms of grant in the charter. But I see in a slip you have printed that Colonel Dennis quotes the language of the charter as if it said that expressly. The charter nowhere says that, (*in hæc verba*). Lord Brougham, Erskine (I think) and several other distinguished lawyers of that day, held that the language of the charter did not give the Company any territory except on the "confines" of the Bay. The charter itself did not carry them to the sources of all the waters emptying into Hudson's Bay, because it excluded them from the territories of the King of France, whose subjects were in possession of the interior of the country.

695. Of course you have looked at the Act of 1803, providing for the maintenance of order in the North-West Territories?—I have met with it, but I never studied it. I have not seen anything in it to change the general conclusion at which I have arrived.

696. There is a memorandum here which you wrote to the Government of Ontario to express your views. Does it do so?—Pretty well; more information has been obtained since, but the conclusions I came to and stated in that memorandum have



not been altered. I believe I was the first to investigate officially the evidence bearing on the important points of the case. Further investigation has brought to light additional evidence, which, to my mind, confirms the general conclusions at which I arrived, and which are set forth in this document.

*By Mr. Trow :*

697. Supposing the charter of the Hudson's Bay Company gave them the right to the Height of Land, or at least up to the head waters of the rivers running into Hudson's Bay, and they should confine themselves to the shore for a century or so, and others in the meantime take possession of the country they had not occupied, how would that matter be settled in point of law, in regard to the true owners of the territory?—I think that if the country up to the Rocky Mountains,—for you have to go that far to get to the head waters of the Saskatchewan,—belonged to the King of England at that time; if he, according to the usage of nations, or the international law of that day, had possession of that territory, and if under the terms of their charter the Hudson's Bay Company obtained territorial rights wherever they could find waters running into Hudson's Bay, then I would say, any occupation subsequent to that, except by an exercise of the prerogative of the Crown taking away from the Hudson's Bay Company their rights, which the King could do at any time would not give title. The mere fact of people going in as the North-West Trading Company did, and occupying a few posts in the country, would not take away from the Hudson's Bay Company their chartered rights, even though they were not in actual possession of the whole of the territory.

*By Mr. Weldon :*

698. The Treaty of Utrecht seems to recognise the existence of French posts on the water-shed of the Hudson's Bay?—On that point there is no doubt. The qualifying words of the charter exclude them from all territory, which otherwise, they might have claimed then or previously occupied by the French. I believe the French were on Lake Winnipeg and the Saskatchewan, and had forts there.

699. They appeared to have forts on the Albany River, which came within the meaning of the terms of those treaties?—They traded with the Indian nations who recognized them as their friends, and as far as a civilized power could obtain possession of territory by the acquiescence of the native inhabitants, they had it.

*By Mr. Trow :*

700. Do you think the Hudson's Bay Company had any right to the soil, or was it merely for hunting and trading purposes?—From the charter, I think, as it was interpreted in those days and was intended, they had a right to the soil as against anybody else.

*By Mr. Weldon :*

701. Whatever those words would include?—Yes; that is the difficulty.

702. The opinion of Lord Brougham is very strong on that point?—That is a question that has been discussed and legal opinions given upon it, and these differ very much as to the nature of the tenure and as to the extent of the territory covered by the words:—"On the coasts, bays, and within the confines of—." We can only guess what those words might have been held to mean in those days. At present they would mean, I think, on or about the shores of Hudson's Bay. No one would use the word "confines" if it were intended to cover a country a thousand miles distant.

703. The coast and mouths of rivers—that would give them the water-sheds of that country, according to the French doctrine?—I suppose France as well as England would, in ordinary cases, make that claim as against other nations. If the country was only accessible from one side, and they held the mouths of rivers and the harbors of the coast, and no other nations could trade or pass by, they would practically control the interior country. But that was not the case here, because it was accessible from the Pacific coast, and by the lakes and rivers of the St. Lawrence valley.

*By the Chairman :*

704. With respect to territorial rights, the Indians seem to have had some title to their native land. Yet all Governments have very conveniently ignored their claims in their disputes?—I take exception to that.

705. Well, at least some of the Governments of those days had little regard for the Indian rights. In the proclamation of 1763, certain territories are reserved to the Indians. All to the west and north of the rivers, which flow towards the Atlantic from the west, and, in fact, all the territories north of the water-shed were held by the Indians?—I think they have the aboriginal right to all the territory unsold, up to what extent that right has been or will be recognized, either by the American, the British or Canadian Governments, is a point on which I do not wish to pronounce, but we recognized it in the B.N.A. Act and in the terms of Union with the provinces. We agreed with the Imperial Government, when we purchased Rupert's land and the North-Western Territories, to treat the Indian tribes with the same leniency, and as entitled to similar rights with those which had been acknowledged by the Imperial Government in former times, and in pursuance of that understanding we have not, so far as I am aware, occupied territories inhabited by tribes of Indians until we had made treaties with them. Some of those treaties are rather generous. But the Imperial and the Canadian Governments have acted on the assumption that aboriginal tribes have certain rights on the soil, which must be extinguished in some way before the absolute right to deal with it can be asserted or exercised.

*By the Chairman :*

706. Admitting that, the Indian claim formed a lien on the land, would not the Government that got the land be liable for that claim?—I think that under the Confederation Act, all questions concerning Indians are assigned to the Government of the Dominion; they are the only power which can make treaties with them, and the only power with which the Indians, under that Act, are likely to deal, or with which they can deal. They can receive gratuities from anybody, from the Local Government, from municipalities, or from an individual; but their legal and territorial rights and relations are with the Federal Government. They are under the protection of that Government, and all treaties made with them, and all stipends and public moneys payable to them, are at the instance and under the direction of the Dominion Government.

707. Would the Dominion Government, if they extinguished an Indian claim in Ontario, have a claim on Ontario for the amount paid to the Indians, the Indian claim being a lien on the land?—My opinion is as between the two jurisdictions, that the Dominion Government, in conceding their right to the land—we will assume that the boundary of Ontario is where the arbitrators have placed it—could, in their treaty with the Dominion Government with respect to their lands, transfer their rights to the Dominion Government and would do so, and in that case the Ontario Government could not deal with those lands and sell or grant them to individuals without respecting the claim or lien of the Dominion Government upon them for any liability they had assumed respecting the Indians.

*By Mr. Trow :*

708. Can you describe the limits of Treaty No. 2, made by Hon. Mr. Laing?—I have not read it with a view to such a question.

709. How far east does it extend into this present award?

*The Chairman*—Treaty No. 2 did not extend into this award at all. I was one of those who negotiated Treaty No. 3, which is the basis of all the treaties made. I can show you the boundary of it.

710. *Mr. Weldon*—The territory covered by Treaty No. 3 is included in the award?

*The Chairman*—The greater portion of it is.

Witness handed in his memo. prepared by him for the Ontario Government, and said: "I have nothing to modify in the general conclusions arrived at in this memo., as I have already stated, a great many additional documents have been brought to light by Mr. Mills and Mr. Lindsay which confirm those conclusions."

Mr. McDougall adds to his evidence, as to the interpretation of the Act of 1774, respect to the country intended to be included within the boundaries prescribed by that Act, a passage from a pamphlet published in England the same year by a supporter of the Government in defence of the justice and policy of the Quebec Act.



It will be found in a collection of pamphlets and papers contained in a volume in the library entitled "North America, 1774."

The paragraphs from page 38 to 45 of this pamphlet bear on the point, and show that the country called the "Illinois country," extending from the Ohio to the head of the *Mississippi*, was understood to have been added to Quebec for the purpose of civil Government. That this was the interpretation of the Act by the Government of the day is proved by the commissions and proclamations, and that the public understood it in the same sense is evident from such publications as the one referred to :—

"The objects of this Act are: the extension of the boundaries of the Province, the revocation of the civil government, which took place in consequence of the proclamation in 1763, and all its Acts; the toleration of the *Roman Catholic* religion, agreeable to the Treaty of Paris; the securing to all the *Canadian* subjects, except the religious orders and communities, the enjoyment of their properties and civil rights; the re-establishment of their ancient laws and customs, subject to such alterations as the legislature of the Province may think fit to make; the continuation of the administration of the criminal laws of *England*, subject to the like alteration, and the establishment of a temporary legislature within the Province.

"When the lines drawn by the proclamation of 1763 for the boundaries of *Quebec* and of the *Floridas*, and for the limitation of settlements under grants from the old Provinces, were resolved upon, a general plan for the regulations of the trade with the savages was under consideration of the Board of Trade, and in great forwardness. To give this plan uniformity and effect, it was thought necessary to exclude all the provinces from jurisdiction in the interior or *Indian* country; but all persons resorting thither for trade (and no settlements were to be permitted) were to be subject to a police, deriving authority immediately from the Crown, and supported by a revenue, arising from a tax upon the trade, to be imposed by Act of Parliament.

"The events of the following year were fatal to this plan, for it was not then judged expedient to lay the tax, and consequently the expense could not be defrayed without an additional charge upon the *American* contingencies, which were thought to be sufficiently burdened already. This was the reason that so large a part of the ceded territories in *America* was left without government, and that the new Province of *Quebec* contained so small a portion of ancient Canada.

"It had been the policy of the *French* Government to possess themselves of the water communications throughout the whole of that vast country, and, for that end to establish posts at the most important passages; but, being well aware of the great difficulty of supplying these posts with provisions from the inhabited country, they settled a little colony round each post, to cultivate the ground and raise provision for the garrison. This gave rise to the settlement at *Detroit*, *Missilmakinac* and upon the heads of the *Mississippi*, called the *Illinois country*, and as these settlers had been put entirely under the direction of the commanding officers of the forts, when the *French* garrisons were withdrawn, and military orders ceased to be law, they were altogether without law or government, especially as, by the new arrangement, they were excluded every *English* province. It must be confessed, no great mischief has happened from these people being left in this lawless state. They had been accustomed to obey *French* military orders, and the *English* officers who commanded the posts which were continued in their neighborhood, of their own authority, exercised the same command over them; and as it was not the purpose of the administration to encourage settlements in those remote situations, the arbitrary rule of the military was tolerated, as most likely to prevent an increase of inhabitants.

"In such parts of this *pays deserts* as lay more contiguous to the prescribed limits of the old colonies, and where there was no military posts kept up, the effect were very different. Emigrants in great numbers flocked thither from the other colonies, took possession of vast tracts of country without any authority, and seated themselves in such situations as pleased them best. As no civil jurisdiction reached these intruders upon the King's waste, and as their number increased every day,

nsomuch that the native savages, in dread of their power, quitted these lands and removed to others at a greater distance, the case was judged to be without other remedy than that of following the emigrants with government, and erecting a new province between the Allegheny Mountains and the River Ohio for that purpose.

*"That the mischief might not, however, farther extend itself, and the like reasons for erecting new colonies at a still greater distance from the sea coast may not again recur, the whole of the derelict country is, by the first clause of the Act, put under the jurisdiction of the Government of Quebec, with the avowed purpose of excluding all further settlement therein, and for the establishment of uniform regulations for the Indian trade.*

"The Province of Quebec was preferred for these ends before all the others, because the access by water is much easier from Quebec to such parts of this country as are the most likely to be intruded upon than from any one other colony, for emigrants always choose to seat themselves upon places where they can have the advantage of a water communication with the market they intended to traffic at; and if this country had been parcelled out among the several colonies that bounded upon it, experience has fully testified the impracticability of their all agreeing upon one general plan, which would have the effect to prevent settlement, or to enforce any regulations which may be thought necessary for giving security and satisfaction to the savages in their dealings with our traders, the only means to prevent the quarrels and murders which are every day happening, and which are the certain consequences of a fraudulent commerce. Both these objects, it is expected, will be obtained by putting this country under the jurisdiction of Quebec; for, as there is now a legislature in that Province competent to enforce such regulations, administration is pledged to recommend that Acts for those purposes be the first objects upon which the legislative powers shall be exercised."

30th April, 1880.

Committee met at eleven o'clock; Mr. Dawson in the Chair.

Mr. WM. McDONALD, of Three Rivers, was examined as follows :

*By Mr. Mousseau :*

111. Have you any special knowledge of questions of disputed territorial boundaries, or practical experience in describing or delineating the same?—Yes. At a very early date, I had the direction of the surveys of the Ottawa River and its tributaries in connection with the lumber trade, the describing of the boundaries of timber limits and supervising their survey when required, under circumstances of great difficulty and complication in the then unexplored condition of almost the whole Ottawa Valley, and in the face of as eager contestants, with as great a variety of conflicting pretensions, and of precisely the same character as could arise with regard to the boundaries of a whole country.

112. Have you in any way specially studied the northern and western boundaries of Canada in connection with the claims of the Hudson's Bay Company as the question stood before the purchase of the rights of the company?—Yes. I wrote a report upon the subject for the Commissioner of Crown Lands at Toronto in 1847, which, I may say, has been the cause of all the controversy that has since taken place in relation thereto. It was the first paper since 1821, through which the just claims of Canada had been asserted and maintained, it has been continually used by quotation or plagiarism throughout every phase of the controversy since, and, I think I may safely say, is mainly the cause that we have redeemed and possess the vast and fertile regions of the North-West to-day.

113. Under what circumstances did you come to write that report and for what object?—I was, at that time, occupying an important position in the Crown Lands



Department. Mr. Cauchon was Commissioner of Crown Lands and a Cabinet Minister. I was generally working late at night, and was then frequently visited by Mr. Cauchon for consultation on public affairs under his surveillance, and one night before leaving, he incidentally mentioned that a despatch had just been laid before Council by His Excellency the Governor General, from the Colonial Office, the purport of which was that the Hudson's Bay Company had made application to be allowed to resign their lease of the Indian territories, and obtain a renewal, and that it was suggested that the answer should be that it was no concern of ours, as the country did not belong to us etc. I at once told him, I dare say, somewhat excitedly, that this was a subject I had been watching for years in the interest of Canada; that the license the Company already had did not expire for two years; that they were but playing the same game they had successfully done once already by resigning the lease before it expired, so as to get the crisis quietly over without any one knowing it; that the country was ours, and our future greatness and prosperity depended on reclaiming it as the just inheritance of the people of Canada. Mr. Cauchon was very much astonished, as the subject had never come under his notice before; he at once took a very warm interest in the matter, but said that in the conversation they already had on the subject there seemed to be no doubt entertained of the "validity" of the Hudson's Bay Company's Charter, and that it did not need renewal. I then explained to him the hue and cry that had been got up about the "validity of the Charter," which was a false issue, for the most part absurd and unfounded, as the Charter, so far as making them a chartered Company was as valid as any other Royal Charter; that if any point in it were invalid beyond the constitutional powers of the King to grant, such as the exclusive right of trade in Hudson's Bay, etc., it was a matter of secondary importance to us; but that it was not the Charter, as he had at first supposed, that they were seeking a renewal of, but a license of exclusive trade with the Indians under a special Act covering a large area of what was properly Canada, under the name of the "Indian Territory." That this Indian territory had already the nucleus of settlement established at Red River, and embraced a great part of the most fertile regions of the continent, which were the just inheritance of the people of Canada, secured to them at the surrender of the country and by the Treaty of Paris. The question then came up of the boundary of Canada, as represented on every map that hung upon the walls or met the eye everywhere giving the northern water-shed of the St. Lawrence from the United States limits as the boundary of Canada, and I explained that there was no authority whatever for such a boundary, and that it was not to be found on maps anterior to 1821. That since the date of the lease of the Indian territories granted jointly to the North-West Fur Company of Montreal and the Hudson's Bay Company, the surveys made by the Canadian Company (a large manuscript map of which was in the Department) had been used for publication in London, and the boundaries laid down as shewn at the instigation of the united lessees of the said territories as a blind which had succeeded in course of a generation in habituating people to the belief that these boundaries were real instead of imaginary. Mr. Cauchon became quite excited and entered warmly into the subject, expressing the strongest determination to defend the rights and interests of the Province—as I must do him the justice to say he always did during the period I served under him in the Crown Land Department. It was then arranged that, as a territorial matter, he was to claim the despatch as appertaining to his Department and bring it to me to report upon. These are the circumstances, and I would only add that from the discussions that arose among Ministers, and the sending of Judge Draper to England to appear before the Committee of Parliament, the report was very much pressed for, and was in fact written against time, which may fairly account for anything that is obscure or imperfect in it.

714. Did you then take the ground that the North-West country, embracing the Red River, the Saskatchewan, etc., were within the boundaries of Upper Canada?—Not exactly. I claimed these countries, and was sustained in that claim by the highest authorities, as the birth-right of the people of United Canada, the just inheri-

ance of the early French settlers who had traded, settled in and originally owned undisputedly these territories as well as the British who had succeeded unitedly with them in possessing, and unitedly with them, as for instance under Sir Alexander McKenzie, extended those territories to the Pacific and to the North Sea, without any intervention or interference, either in the way of prevention or aid from the Hudson's Bay Company, who had then made no such pretension as they did at a later period. It might indeed seem that the claim put forward by me (and which became the ground-work of all that Canada claimed and has accomplished since) would have injured, if promptly and efficiently maintained, to the benefit of Upper Canada, but that was not a point of special importance at the time—we were one Province, under one Government and one Legislature, under the same laws (except in some particulars of French and English law which did not seem to me to be of much importance), and every acre of those vast regions was as much the property of the one as the other portion of the United Province. I simply demonstrated that the country was part of that acquired by Great Britain as Canada, or *la Nouvelle France*, and that as such, it was the duty of our Government to claim it, whether it was technically within our Provincial boundaries, or as a dependency of Canada, formed part of the "Indian territories," to which the then expiring lease gave us the opportunity of maintaining our original title.

715. What do you mean by the "Indian territories;" can you state definitely what they were?—When the first Province of Quebec was constituted in 1673, it embraced a very limited portion of the country just then acquired from France, the great bulk being reserved for the benefit of the Indian nations, who were its principal inhabitants. In 1774 an Act was passed extending the boundaries of the Province of Quebec, and whatever this Act did not embrace within these boundaries continued to be reserved for the benefit of the Indians, and would therefore be the "Indian territories."

716. How do you define the boundary prescribed by the Quebec Act of 1774, as the western boundary of the Province?—That point might be deemed sufficiently clear by itself, in the terms of the Statute, but seems to be involved in some difficulty by reason of official mistakes. The other boundaries of the Province are described with such minute accuracy of detail that the vagueness of "northward" taken by itself would, in my mind, imply some condition by which its precise direction would be guided. It would not necessarily be a due north line. It might be to the east or to the west of north, according, as these conditions prevailed, the one way or the other, but if all conditions failed it would, of necessity, be due north. The conditions are: 1st, that starting from the Mississippi, at its junction with the Ohio, it runs northward; and 2nd, that it strikes the southern boundary of the Hudson's Bay Co's territories. Taking the first, if the commission, issued immediately after the passing of the Act, was meant to interpret it, then the Mississippi would be the westerly boundary of the Province, as far as it went. There is not, however, the slightest doubt but what the upper waters of the Missouri were, at that time, taken to be the Mississippi and such a boundary would, in no sense, be called "northward" as it would be about north-west. Such a boundary would not, therefore, fulfil the first condition and still less would it fulfil the second, as a line in continuation of the general bearing of the Mississippi, as laid down on the maps of the day, would never strike the southern boundary of the Hudson's Bay Company's territories, as then understood. Assuming, however, that the Governor's commission gave so much of the boundary as was intended to run along the Mississippi River, and that the "northward" meant from its source to the southern boundary of the Company's territories, it would equally fail in fulfilling the second condition, as, to do so, the line would require to take a new departure and a new course, and run north-easterly. Failing, therefore, in both conditions, we necessarily fall back upon a due north line, which does fulfil these conditions, as it is "northward," and strikes the southerly boundary of the Hudson's Bay Company's territories, though it does not accord with the terms of the Governor's commission, which I shall deal with presently. It is hardly worth while to advert to the fact that the Mississippi, taking simply what is so designated at the



present day, would fulfil the first part of the condition of the boundary in being sufficiently near north to be called "*northward*," but even that would not fulfil the second condition, as a continuation of the line on its general bearing would not strike the Hudson's Bay Company's territories, as then recognized, but would pass to the westward thereof. It is needless to discuss this, however, as that was *not* the Mississippi mentioned in the Act—neither was it the Mississippi meant or intended, even at a later period, when the independence of the United States pushed our southern boundary up to the 49th parallel on a due west course from the Lake of the Woods, as it was perfectly well known, at both those periods, that the source of the Mississippi, as now known by that name, lay to the south, or even east of south from the north-west angle of the Lake of the Woods, and could not, therefore, be the Mississippi the due west line from that point was intended to intersect.

Notwithstanding, however, that these conditions fail to give the line a direction either to the east or to the west, I would not construe the Act rigidly as meaning a due north line if any contemporaneous Act of the Imperial Government had otherwise construed it, and at first sight, the Governor's commission, first issued thereafter, would seem to imply such a construction.

The instructions to the Governor simultaneously issued with that commission, would seem indeed to account for the difference between the Act and the commission, and indicate that the distinction was not a matter of accident or oversight, but of design. I have already adverted to the fact that on the formation of the first Province of Quebec, in 1763, all the then recently acquired territories of Canada, or New France, were reserved for the use and protection of the Indians, and only so much as was deemed necessary for the purposes of civil Government affecting the European population, erected into a Province. As a better acquaintance with the actual circumstances of the country grew up, it became expedient to extend and enlarge the Province of Quebec, and hence the Act of 1774. This Act did one of two things. It either, on the one hand, abolished all separate autonomy of the Indian nations (so carefully guarded in the proclamation of 1763), abrogated all special charge of the Indians as the wards of the Crown, and extended the Province of Quebec over all the territories acquired from France by the Treaty of Paris, without any liminary line whatever; or, on the other hand, it presented a positive and defined liminary line, dependent as to its exact position upon conditions already explained, but absolute in its essential characteristics.

If the latter of these propositions were unconditionally true, I argued in the report written for the Government and signed by Mr. Cauchon in 1857, that the Act would have so expressed it by saying "*due north*," and read by the light of the commissions and proclamation of 1791 (to be further adverted to), which were then before me, I would say so still.

If the former of these propositions were true, the converse of this might as well be assumed, and that the Act would have so expressed it as covering the whole of the acquired territory, especially as the distinction seems to have been quite well understood at the time, as evidenced by the commission and certain instructions that issued simultaneously therewith, and which, differing from the Act, undoubtedly did put the whole of the ceded territory under the Governor as "dependencies" of the province created or enlarged by the statute. And here I think may be found the solution of the difficulty that confronted me in the hurried composition of the report of 1857, and which I had not then the time to study up, viz.: as to the division between the Indian territories and Canada. A glance at that report will show that it was intended to prove, and did prove, that no part of the territory ceded by France by the treaty of 1763, including the countries on the Red River and the Saskatchewan, could possibly belong to the Hudson's Bay Co., that they simply held license of exclusive trade with the Indians since 1821, under a specific Act for a specific and limited time, in that part of the ceded country called the "*Indian territories*," and that as the lease was about to expire, and United Canada then in a position to assume control of these territories, it should not be renewed.

I think it must be clearly seen that by the authority of the Imperial Government, either with or without Parliamentary sanction, (although the Quebec Act of 1774, may not be held to have done so), the whole of the territory acquired from France by the Treaty of Paris was put under the Governors of Quebec, and afterwards of Lower Canada, as it was done after as well as before the division of the Province, until 1821.

The Province of Quebec and its dependencies were thus manifestly two distinct things. The "*dependencies*" were part of the territory acquired from France, as well as the enlarged Province of Quebec, legally constituted and bounded by the statute, was: but the Province of Quebec did not cover all, else there would have been no Indian territories and no dependency. The Proclamation of 1763 clearly reserved the whole acquired territory as Indian territory, except the small Province of Quebec then constituted. The enlargement of that small Province was cut out of that Indian territory, the remainder of which, in the more settled state of things that was succeeding to military occupation, was naturally placed under the Governor General as a *dependency*, but not as part of the Province constituted by the Act.

This leads to the enquiry of how the Proclamation of 1791, dividing the Province of Quebec, came to be issued. I have shown that there were two distinct things; 1st, the Province of Quebec; and 2nd, its "*dependencies*." By its dependencies, I apprehend there can be no difficulty in distinguishing the "Indian territories" set aside and recognised by the first act of Government performed towards the country acquired under the treaty, by the Proclamation of 1763, and afterwards encroached upon, but not absorbed by the Quebec Act of 1774. The commission issued to Lord Dorchester in the period intervening between the independence of the United States and the division of the Province of Quebec (1785) necessarily prescribed the international boundary, (I here drop the word and state the fact) to the waters of the Missouri, supposed at that time to be the true Mississippi. This was no more than his previous commission in 1774 had done, and was certainly within the prerogative right of the Crown to do, even though the extreme limit of his jurisdiction may thus have gone far beyond the boundary legally provided by Statute for the Province of Quebec. In fact, it was a necessity of the case that the supreme authority, the only authority representing the territorial rights of the Crown in the country, should cover the whole of the acquired territory, whether within or without the Province constituted by Statute, otherwise the whole country outside of the Province would have been practically abandoned.

With these precedent facts established, though the Order in Council of 19th of August, and the Commission to Lord Dorchester of 12th September, 1791, very clearly defined what was to be done, it devolved upon the Lieutenant-Governor, temporarily administering the Government in the absence of his Chief, to issue the proclamation for the division of the Province, which he did under date of 18th November, 1791, and expressed one part of it in words which may have a presumptive, but certainly have no intelligent meaning. It is impossible, without any data to go by, to realize how the wording of the proclamation came to be adopted. Possibly Lieut.-Governor Clarke may have been advised that the Order in Council and Commission did not cover all the territory already placed under the jurisdiction of his Chief, as, for instance, by the Commission of 1786, and not realizing the distinction between the legal boundaries of the Province and its *dependencies*, this gentleman, who was a soldier and not a statesman, seems to have conceived the idea of adding to the act he was required to accomplish, and giving as a *quotation from* the verbal definition of it, words which *it did not contain*, and not only so, but suppressing the words which it did contain. It was this ill-conceived proclamation that seems to have exercised the Bar and the Bench in the De Reinhardt trial at Quebec in 1818, and, without sifting the discrepancy, of which the above appears to be the only possible explanation, the Judges held to their interpretation of the Act, pure and simple, as they found it in the Statutes. I must confess that taking the proclamation of 1791, as elaborated by Messrs. Stuart and Vallière de St. Réal, then reputed the ablest counsel in the country, and not noticing that it was in conflict with every other official act of the time, so



far as these acts have yet become available, and which were not, in fact, available at that time for reference, I was thereby influenced in the indecision or doubt I expressed regarding the precise division *between Canada and the Indian territories*; but I must here add that it had no effect whatever upon the conclusions I then arrived at, and still adhere to as absolutely beyond the possibility of intelligent contradiction, upon the true *extent of Canada unitedly with its dependencies, the "Indian territories,"* as against the pretensions of the Hudson's Bay Company, which was a matter of undoubted historical fact, public law, long acknowledged possessory right, and fully admitted alike by the Bench and the Bar on the occasion referred to.

I would here call attention to the fact that the sole pretension of the defence in the De Reinhardt trial was, not that the Province of Quebec, as constituted by the Act of 1774, covered the territory in question; on the contrary, it was clearly admitted that it did not, but that in the division of the Province of Quebec, under the Act of 1791, the King not only *divided* the Province of Quebec, but by the exercise of His Royal Prerogative, added to that part of it which became Upper Canada.

This was the pretension, and it rested solely upon the Proclamation of 1791.

It, therefore, becomes a matter of the first importance to ascertain what this Proclamation amounted to, on which two pertinent questions arise:—

1st. Was it authentic—by which I do not mean any question as to its having gone through all the forms and been duly promulgated, as it professes to have been, but as to any authentic authority given to the Lieut.-Governor by the Crown, to add the words, or rather substitute the words which have been the cause of all the controversy, and which differ from every other authentic authority of the day that has yet been brought to light?

2nd. Assuming its authenticity and authority as proved, does it really do that which has been attributed to it and add to Upper Canada more than a specific allotment out of the pre-existing Province of Quebec?

If either of these conditions fail, the whole fabric on which the pretension of claiming a boundary, beyond that assigned by Statute to the Province of Quebec, has been raised, that would embrace the Indian territories in Upper Canada, crumbles to the ground.

On the first of these it may not be surprising, that in the De Reinhardt trial neither the Bench nor the Bar seem to have questioned the authenticity of the authority under which Lieut.-Governor Clarke issued the Proclamation in question, containing the added words; it was, as a matter of course, taken for granted that it issued *in its entirety* under the direct mandate of the Crown. And yet we have the fact now plainly established, that every contemporary act of authority was in direct contradiction of the meaning attributed to the words added or substituted. The Order in Council of 24th August, the commission to Lord Dorchester of 12th September, clearly describing Upper Canada as comprehending such territories west of the dividing line, "*as were part of our Province of Quebec,*" and no more, and the instructions to his Lordship, again stating the boundary to be "*as in our said commission is particularly expressed,*" must all have reached Quebec just shortly before the Proclamation issued on 16th November, 1791, and were all in direct contradiction of it; and not only so, but every subsequent commission up to that of the Earl of Durham in 1838, contained precisely the same definition and in the same words, making the westerly boundary of Upper Canada identical with that of the pre-existing Province of Quebec as constituted by the Statute of 1774.

The words added by Lieutenant-Governor, General Alured Clarke, were therefore without authority, and, consequently, were and are without effect.

But, on the second of these points, do the words substituted by Governor Clarke really convey the meaning so extensively attributed to them? A vaguely-expressed idea, indistinct and meaningless, may sometimes, rashly interpreted, get hold of mens minds and become widely expatiated upon, while no one ever thinks of any close analysis of the original, but takes for granted any supposed meaning that may have been once attached to it, and makes that instead of the real meaning the ground of long disputation. Any one accustomed, however, to the delineation of complicated

boundaries, on sitting down, pencil in hand and map before him to apply specific words with mathematical precision to intelligible results, will very soon come to a point of error, if it exists, that will bring the matter to a stand. Such seems to be the case with regard to the Proclamation of 1791, and the unauthorized words it contains, which, when tried by the test of the most superficial analysis, are found to be utterly meaningless.

Let anyone read the proclamation and see whether it says that Upper Canada shall have an extent greater than its allotted portion of the divided Province of Quebec. The description is precisely the same as in all the other authorities up to the words "boundary line of Hudson's Bay." The other authorities continue: "The Province of Upper Canada to comprehend all such lands, territories and islands lying to the westward of the said line of division as were part of our Province of Quebec; and the Province of Lower Canada to comprehend all such lands, territories and islands lying to the eastward of the said line of division as were part of our said Province of Quebec." That is at least clear and explicit, but *instead* of this the proclamation continues, "*including* all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada." These words *do not follow*, they are *substituted*, for the words that declare what shall be Upper and what shall be Lower Canada. Had the declaration of what should be Upper Canada been inserted and followed by these words, the meaning would at least have been intelligible and apparent, and it would have only remained to consider whether Governor Clarke had the power to make the change.

But as the words stand, let me ask, in what was this territory "to the westward and southward, etc.," *included*? Not in the Province of Upper Canada! The proclamation does not say so. Let me read from the document itself, leaving out the mere description of the line, "that our Province of Quebec should be divided into two distinct Provinces, to be called the Province of Upper Canada and the Province of Lower Canada, by separating the said two Provinces according to the following line of division"—"*including* all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada." Now, the introduction of the description of the line does not alter the sense in the least; it is still the "line of division," (as described) "*including* all the territory, etc." What is it, then, that has the privilege of "*including*" all that territory? Is it Upper Canada or is it Lower Canada? The proclamation does not say, and the only grammatical solution the construction of the sentence is susceptible of is that the "line of division" includes itself and all the territory to the westward and southward of itself. And yet it is on such nonsense as this, substituted for language the most clear and definite that could be put in words that the claim has been preferred to half a continent.

There may, indeed, be a *presumption* that it was the intention to include all the territory, etc., within the limits of Upper Canada, but the intention of the writer, if such it was, has not been expressed in intelligible language. It is not, however, clear that it was even the intention, as there may have been some correspondence indicating that the unorganized or Indian territories should remain in some way under the Governor General (as they did before and as they did after), and which, misinterpreted, may have caused the error, for, according to the words used, and the only possible grammatical application of them, it is Lower Canada as well as Upper Canada and the line of division that includes all the territory, etc.. The proclamation does not say that Upper Canada is to the west of the line of division, nor that Lower Canada is to the east of it. It simply describes the line of division as including all the territory, etc.

To elucidate any intention that may have existed by the correspondence of that day, there seems to have been no enquiry or investigation by the Dominion, and the volumes published by Ontario have not resulted from researches made on every point in the right direction. The enquiry would only be interesting, however, as affecting matters of historic research, as the facts already available are quite sufficient to establish the point now in controversy.



I need only further remark on the Indian territories that they were, though vaguely, defined by the proclamation of 1763, as embracing all the lands not covered by the Province then constituted, including the lands to the north-west beyond the sources of the rivers flowing from that direction. They were encroached upon to some extent by the Quebec Act in 1774, and by instructions of that date put as "dependencies" under the Governor of Quebec. In 1803 they were legislated specially for and again put more particularly under the jurisdiction of Lower Canada, in virtue of which commissions of the peace were issued and criminals arrested and brought therefrom for trial in the courts of that Province. On one of these trials a question arose as to whether the boundary between Upper Canada and the Indian territories was governed by the Quebec Act of 1774 or by the Proclamation of 1761, and a judicial decision was then rendered that such boundary was governed by the Act, and that the interpretation of the word "northward," as used in the Act, was due north. This decision was taken to England by appeal, or reference by consent, to the Imperial authorities, but was not reversed, and therefore remains of binding force as to what was then the boundary, unless and until some constituted tribunal of higher authority declares otherwise.

Trials took place about the same time in Upper Canada for offences committed in the same region west of Lake Superior, as being within that Province, but without result or judicial decision on the point involved. By the Act of 1821, the "Indian territories" were put more particularly under the jurisdiction of Upper as well as Lower Canada, but without further definition of their boundaries, and by the exclusive license of trade with the Indians granted jointly to the fur companies of Montreal and Hudson's Bay, were practically lost sight of by the people of Canada for, I may say, more than a generation, when the application of the company for a new lease, the action taken in Canada as already described, and the enquiry before a committee of the House of Commons in England brought on the agitation that has ultimately—though not so soon, nor on the terms we should have had it—put us in possession of the country.

I submit copy of the report I wrote for the Commissioner by which this matter was first brought into notice in 1837, the evidence I gave before a Committee of the Legislature the same year, and also a set of resolutions I moved during the following year in Parliament, to which I had been elected for Three Rivers in the interim. These resolutions were negatived through influences it is not necessary now to dwell upon, but I may call attention to the fact, that these papers maintain the just rights of Canada, unfettered by sectional divisions, just as I maintain them to-day; and if any sectional discrepancy appears as to the division between Canada and the Indian territories, it will scarcely seem strange that a document—the Proclamation of 1791—emanating from the highest authority in the country, professedly under the Order of the King in Council, after having been argued upon before the court of highest jurisdiction without exception being taken by the Bench or the Bar as to the authority from which it professed to emanate, or the meaning that was attributed to its verbal construction, should have been taken by me in the light which it was thus placed before the world, notwithstanding that a scrutiny, to which I had not then subjected its contents, and examination of the documents on which it was founded, now show that it had neither the authority claimed for it nor conveyed the meaning attributed to it.

Q. Have you examined the boundary prescribed by the Arbitrators appointed by the Dominion and the Province of Ontario, and can you state upon what ground of history or fact it rests, or can be maintained?—With all possible respect for the Arbitrators, two of whom I have known well and esteemed highly, and the other of whom, occupying a diplomatic position that commands the confidence and respect of two great nations, is entitled to the highest consideration, I must nevertheless candidly say, that their decision has no basis whatever of history or fact to sustain it. If the Arbitrators conceived that they were to make a boundary, it was, of course, a matter of opinion as to where it would be suitable to place it, in which they would be right to exercise their own judgment and views of expediency; but if they had

merely to examine and declare where the boundary was, or where it had ever been, they have accepted that which was not a possible one. They had, I think, one of three things open to them to declare. 1st. That Ontario embraced the whole North-West Territory under the Proclamation of 1791, which I have just dismissed as untenable. 2nd. That it was bounded by the line prescribed by the Quebec Act in 1764; or 3rd. That a more recent definition which they seem to have intended to adopt *in part*, should prevail. The boundary they have adopted was not a possible one under any circumstances.

As to the first, apart from the untenable character of any proposition based upon the proclamation of 1791, with the analysis I have just given of its contents, I think that Ontario practically entered confederation without it, as well as that Confederation would have been practically impossible with it, as the smaller Provinces would not have consented to stand like pigmies beneath the shadow of a colossus; assuredly objection would have been taken by Lower Canada, already stripped by the division of the Province in 1791 of the just inheritance of her people (jointly considered as regards both races), and a new Province established in the very garden of the then available country, whose people rapidly accumulating the wealth that soil and climate poured for them into the lap of plenty, have been sometimes but too ready to decry the less rapid advance of those whose lot has been cast in the more sterile regions of the north; and finally, if Ontario even had any such colorable claim, she abandoned it when a majority of her representatives voted for the erection of the Province of Manitoba.

As to the 2nd, had the British North America Act declared that the Province of Ontario should consist of Upper Canada as it had existed for 47 years, (from 1791 till 1838), instead of as it existed at the passing of that Act, it would very clearly have embraced all that it had originally possessed as the western division of the former Province of Quebec; but its description having been changed by competent authority at the last-named date, it ceased to have the same boundaries as before and entered confederation as it then existed.

On the 3rd alternative, therefore, that was open to the Arbitrators, and which they seem to have intended to, and did in part, adopt, I would observe:—that, for a consecutive period of 47 years, in every document issued by competent authority, after describing the divisional line drawn due north from the head of Lake Temiscamingue “to the boundary line of Hudson’s Bay,” the Province of Upper Canada was declared in the most brief and intelligible language as simply “to comprehend all such lands, territories and islands lying to the westward of the said line of division as were part of our Province of Quebec.” Its boundary on the north, therefore, was the “boundary line of Hudson’s Bay” which, by the Statute which gave a limit to its boundary in that direction, necessarily, was the southern boundary of the Hudson’s Bay Company’s territories, wherever that might be found. It was positively restricted by Statute from going further. Its westerly extension has already been fully dealt with.

In 1838, however, the description was entirely remodelled, all reference to what it had been as a division of the former Province of Quebec expunged, a new description formulated and a new, distinct and, in some respects, entirely different boundary given to Upper Canada by competent authority, as embodied in the commission to Lord Durham, and continued in every succeeding description thereafter.

By this new boundary the Province of Upper Canada was extended on the north to the “shore” of Hudson’s Bay, and curtailed on the west to the entrance “into Lake Superior.”

I observe that it has been contended that “the boundary line of Hudson’s Bay” and “the shore of Hudson’s Bay” were convertible terms and meant one and the same thing. I cannot admit this; the law does not admit it, for it has declared that a territory granted to the Hudson’s Bay Co. existed, and if it existed it had to be found somewhere between its southern boundary and the shore of Hudson’s Bay, and its southern boundary being, by Statute law, the northern boundary of the Province of Upper Canada, it could not be identical with the shore of Hudson’s Bay.



The question then arises, had the Crown the prerogative right to extend the boundary of Upper Canada to the north beyond that provided by Statute, and if so did that right include the power to extend it over any part of the Hudson's Bay Company's territories? On this point, it may be observed that the Hudson's Bay Company's territories had already been put by law (Act of 1821) very effectually under the Government of Upper as well as Lower Canada—reserving whatever peculiar rights may have appertained to them under their charter. The Hudson's Bay Company were a trading concern, having certain rights, but they were not a government—notwithstanding that they made no pretensions in that direction, and, I see nothing in the law, as it then stood, to render it incompatible for the Royal prerogative to have extended the limits of Upper or of Lower Canada over these territories, reserving the rights of the Company as the law already did.

This seems to have been the view taken by the Arbitrators, for they commence their description *at the shore of Hudson's Bay* where an extension of the due north line from the head of Lake Temisamingue would reach it.

It would not, however, appear to be the view taken by the Department of the Interior if I may judge by the Dominion maps issued since the sitting of the Arbitrators, for these maps carry the boundary of Ontario to the *shore of Hudson's Bay* as if the Arbitrators had made a boundary there, but do not carry the contiguous boundary of Quebec to the same point, but indicate it as extending only to what may have been considered "the boundary line of Hudson's Bay." The Department must necessarily be in error in this, for the Arbitrators have not made nor declared a boundary for Ontario between these points. They have assumed it as existing by commencing at the *shore of Hudson's Bay*, but if the Department is right, there is a hiatus and no legal boundary whatever provided for Ontario in the large gap between the point where the boundary of Quebec is made to terminate and the point where the Arbitrators commence their description, for if they were right in commencing there, Quebec also extends contiguously to the same point, as the same extension of Lower Canada to the North was made in 1838 as of Upper Canada, in a separate and distinct description.

I think, therefore, that in commencing their description at the shore of Hudson's Bay, the Arbitrators were correct, and that the Crown had the prerogative right to extend the boundary to that point, just as the first Province of Quebec was created in 1763; and as the extended Province of Quebec *might have been* further added to by Proclamation in 1791, had it been so done by proper authorization, and conveyed in intelligible language, which it was not.

I now come to the other point, *the curtailment of the Province on the West* by the same instrument the Arbitrators have recognized *as extending it on the North*.

By that instrument it will be seen that all reference to the former Province of Quebec, to be found in every antecedent descriptive act of authority for the preceding forty-seven years, is entirely dropped, and a new description, complete within itself, formulated, not resting upon any previous law, Proclamation or order. From that date, the Province of Upper Canada no longer subsisted as a divisional part of the old Province of Quebec; it subsisted from that date independently, on the merits of the description by which it was duly designated by competent authority, and by which its limits were extended to the "*shore*" of Hudson's Bay on the north, and curtailed to the entrance "*into Lake Superior*" on the west. I apprehend that there can be no constitutional objection to the prerogative right of the Crown to make the extension. Those who maintain that the Province of Quebec was extended by the Proclamation of 1791 cannot, at least, controvert it. If, then, it was a constitutional exercise of the prerogative to extend it to the north, as assumed by the Arbitrators and acquiesced in by Ontario, how can the legal exercise of the prerogative, authorized by a specific provision of statute law to curtail it in the west be denied? That specific provision of law will be found in the Quebec Act of 1774, enlarging the Province by certain additions that were to subsist only "*during His Majesty's pleasure*" by which power was undoubtedly given to the Crown to curtail it again, which was done by the new

and specific description most carefully and minutely drawn up for the Earl of Durham, in 1838, and continued thereafter.

I conclude, therefore, that the Arbitrators were right in their construction of that part of the description of Upper Canada existing at the time of the passing of the B. N. A. Act—as it was, in fact, contended for by the Ontario Government—by which the Province had been, about thirty years before, extended to the shore of Hudson's Bay; and that, whether from their not being experts in matters of the kind, accustomed to deal with questions of boundary, or from the exceedingly defective manner in which the case for the Dominion was placed before them—which was, in fact, no case at all—they failed to give effect to the whole description, on one part of which they acted, and consequently failed to define correctly the western limit of the Province.

The following is the description of Upper Canada as it entered Confederation:—

“The said Province being bounded on the east by the line dividing that Province from Lower Canada, beginning at a stone boundary on the north bank of the Lake St. Francis, at the cove west of the Point au Beaudet, in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of north thirty-four degrees west, to the westernmost angle of the said Seigneurie of New Longueuil; thence along the north-western boundary of the Seigneurie of Vaudreuil, running north twenty-five degrees east, until it strikes the Ottawa River, to ascend the said river into the Lake Temiscamingue; the said Province of Upper Canada being also bounded by a line drawn due north from the head of the said lake until it reaches the shore of Hudson's Bay; the said Province of Upper Canada being bounded on the south, beginning at the said stone boundary between Lancaster and Longueuil, by the Lake St. Francis, the River St. Lawrence, the Lake of the Thousand Islands, Lake Ontario, the River Niagara,\* Lake Erie, and along the middle of that Lake; on the west by the channel of Detroit, Lake St. Clair, up the River St. Clair, Lake Huron, the west shore of Drummond Island, that of St. Joseph and Sugar Island, thence into Lake Superior.”

That description gives as its easterly boundary from the Ottawa, a due north line to the shore of Hudson's Bay, and as its westerly limit the commencement of Lake Superior; and taking the description simply on its own merits, on the one point as well as the other, its westerly boundary must run from its extreme westerly extension, where it enters Lake Superior, parallel to its eastern, due north to the shore of Hudson's Bay.

*By Mr. Ross:*

717. Does that agree with your contention as to the northward line from the confluence of the Mississippi; it will be 200 miles short of that?—That was previous to 1838. I take the ground that that was changed. The new boundary was made according to the terms of the description given in 1838.

718. Why due north from the east end of Lake Superior instead of striking a line from the east end of Lake Superior diagonally across the country to the shore of Hudson's Bay. What authorities have you for going due north?—Because, as a general principle, if you give a description due east or due west or due north, say, for instance, due north from the head of Lake Temiscaming, and extend the Province so far westward, then your western boundary is naturally a boundary parallel to the eastern, unless otherwise described.

719. That is merely an inference. Where would that line due north from Lake Superior terminate?—At the shore of Hudson's Bay.

720. It would strike Hudson's Bay?—Certainly; it would still go parallel to a due north line from the confluence of the Mississippi and Ohio. I was going to remark, in reply to the suggestion that I differed so much from everybody else, that I did so only when I wrote that report in 1857, no other had given the subject any consideration. I might turn out as near right now as then.

721. You were the first explorer. Does that statement substantially agree with

\* In the first description there seems to have been a clerical error making the Niagara River fall into Lake Erie, but afterwards corrected, and I have copied from the corrected one.



your report of 1857?—Yes; except in this that I did not raise then the question of inter-provincial boundary. I was claiming the country for Canada as a whole.

*By Mr. DeCosmos :*

722. You stated that licenses were granted to Montreal Companies to trade in the Indian territory. Who granted the licenses, to whom were they granted, and where was the eastern boundary of the territory?—The licenses were granted under the Imperial Act of 1821, which had been passed in consequence of the troubles and bloodshed that had occurred there between the two companies, the North-West Company of Montreal and the Hudson's Bay Company. The license was granted by the Imperial Government, and these two companies united and settled their differences. The first license to exclusive trade with the Indians was granted to the North-West Company of Montreal, the Right Honorable Edward Ellis and others, (conjointly with the Hudson's Bay Company) who afterwards became the strongest advocates of the claims of the Hudson's Bay Company, of which they had previously been the strongest opponents. The actual boundaries of the territory were not definitely described any more than they had been at any previous period.

Committee adjourned.

MAY 3, 1880.

The Committee met.

Mr. W. McD. DAWSON re-called and further examined:—

*By Mr. Ross :*

723. Did you ever see the lease that was made to the North-West Fur Company of Montreal for trading in furs in the Indian territories?—You mean the lease that was made to them jointly with the Hudson's Bay Company?

724. Yes?—I have seen it. It was made on December 6th, 1821, and was resigned in 1838, three years before the time at which it would have expired.

*By Mr. Trow :*

725. What object had the company in resigning the lease?—The object stated was that the North-West Company had sold out to the Hudson's Bay Company, but in fact the former company became incorporated with the latter.

*By Mr. Ross :*

726. What powers, under the joint lease to the North-West Fur Company and to the Hudson's Bay Company, did these companies exercise in the country in question; were they territorial powers or powers to trade?—They were simply and exclusively powers to trade with the Indians. The true object of resigning the lease was, I may say, to blind the eyes of the Canadian people by making it appear that all this country that had been leased to them as Indian territory came in fact under their charter.

727. Will you explain as near as you can over what area of country they traded; and over what area you think they had a right to trade?—You mean the two companies jointly?

728. Yes?—They traded over precisely the same country as the two companies had traded over before when separate. The North-West Company traded, for instance, in succession to the French over the whole country from Lake Superior, first to the Rocky Mountains, and afterwards through the discoveries of Sir Alexander Mackenzie, to the North Sea by the Mackenzie River, and to the Pacific by the Fraser River and the Columbia.

729. So that they traded over all that is now Canada with the exception of Quebec and the Maritime Provinces?—They traded from Lake Superior to the Pacific and to the North Sea. The North-West Company, in succession to the French, were the first to do so. The Hudson's Bay Company made their first post in the interior in 1774. They had never gone into the interior from the shores of Hudson's Bay before that.

*By Mr. Royal :*

730. But it is a fact that the fur-trading posts of the French had been established in that part of Canada before the cession of the country to England?—Most undoubtedly. There was Fort Bourbon, near the mouth of the Saskatchewan, Fort La Reine, Fort Maurepas, Fort Rouge and others on the Red River, the Winnipeg, Rainy Lake, etc.; all these were established before the French ceded the country.

*By Mr. Trow :*

731. Did you, in your report, question the validity of the Hudson's Bay Company's Charter?—I explained that in the first part of my evidence. The validity of the Hudson's Bay Company's Charter had been a subject of question before. I ignored that controversy altogether. I admitted the validity of their Charter so far as it made them a chartered company, but I denied that it covered the territories ceded by France, which were occupied in succession to the French by Canadians, British and French together, and became known as the Indian territories.

*By Mr. Royal :*

732. I suppose you have noticed the evidence given before this Committee by judges on the effect of proclamations and commissions to Governors. You have in your last evidence referred to those commissions in connection with this question?—Yes, I remark upon it, that since I was before the Committee on Friday, my attention has been called to the fact that some hon., judges who were examined, do not attach much importance to descriptions in Governor's commissions or even proclamations that would over-ride boundaries established by law. But my contention does not conflict with this: When Upper Canada was curtailed on the west by the commission issued to Lord Durham in 1838, it was in strict accordance with a specific provision of law; and when it was by the same instrument extended on the north over a part of what could not but be deemed as appertaining to the Hudson's Bay Company's Territory, there not only was *no law violated*, but the deed had been already, *in effect*, accomplished and all but completed by the Act of 1821 extending the jurisdiction of the Province over it.

I assume that Lord Durham's commission correctly designated the limits of the Provinces, to the government of which he was appointed under very exceptional circumstances. It is needless to refer to these circumstances, further than to say that they were such as to cause the deepest anxiety to the British Government, and to ensure to every act affecting the interests of the country, the closest and most careful supervision. When, then, we find under these circumstances, a most careful and studied revision of the boundaries by which these Provinces had been continuously designated for 47 years previous, I am compelled to assume that the change was an intentional, a deliberate, and a legal one, effected at a time when the state of this country made every Act in relation to it a matter of great care and anxiety. It must therefore have undergone the most anxious consideration of the whole Cabinet, and been found both expedient and entirely within the powers of the Crown, under the ablest advice and the best legal acumen the British Government could command.

With these facts established, therefore, no expert in such matters, with this description before him, can, I think, for a moment hesitate in laying down the boundaries of Upper Canada, under which her distinct autonomy, both separate and in union with Lower Canada, had been continuously recognized for about 30 years before the passing of the B.N.A. Act, with that mathematical precision that leaves no doubt. There may be room for argument on one point, on which the description is not fully closed, but not of sufficient force to create a rational doubt. The northerly and easterly boundaries are first described, and the most northerly limit is the shore of Hudson's Bay on a line continued due north from the head of Lake Temiscamingue; the south and south-westerly boundaries are then described and the most westerly limit is the commencement of Lake Superior; you can go no farther, the shore of Hudson's Bay is the limit on the north; the entrance to Lake Superior is the limit on the west; you can only close the boundaries by connecting these two points, and there is but one rational way to do it, by producing from your last-named western



limit, a westerly boundary, parallel to the eastern, to the other objective point, the shore of Hudson's Bay; your only alternative would be to connect your two objective points by a direct line; but I don't think it admissible. When you have got an easterly boundary distinctly described, and a westerly extension to a given spot specially named, a parallel line to your eastern necessarily becomes your western boundary. You certainly cannot go west of it.

Upper Canada, then, ceased to be a constituent part of the former Province of Quebec in 1838. From that time it had a separate and *distinct identity* with which, with that specific description and these boundaries, it entered Confederation, and no pre-existing state of things or past history can shake it.

I would only further observe that the large northerly addition thereby made to the Province of Upper Canada embraces a very extensive and valuable territory, a considerable portion of it lying south of some very fine Lower Canada settlements, with a degree of westing that also favors its climatic character, while it abounds with coal or lignite and other minerals of great economic value.

I would call the attention of the Committee to another point that may have escaped notice, which is, that *at the very time* when this somewhat revised boundary was made in 1838, the affairs of the Hudson's Bay Company, and the joint lessees representing the Canadian interest were also under discussion before the Imperial Government on the question of resigning the first lease and obtaining a renewal, which renders it all the more unlikely that there was any misunderstanding on the part of the Imperial Ministers as to what they were doing.

It will also be observed that the Act of 1821, authorised the license of trade in the Indian territories, "not being part of the lands or territories heretofore granted" to the Hudson's Bay Company, and yet, the license when issued, while making all the other exceptions named in the Act, did not except the Hudson's Bay Company's territories; and why this was so, as must strike the most casual observer, was that to get a share in the trade of the Canadian North-West, the Hudson's Bay Company consented to the Canadian Company sharing the trade of their chartered territory and the fact that this was all a second time under discussion during the great crisis in Canadian history (in 1838) when the amended boundaries of the Provinces were described, shows that the matter obtained the fullest consideration.

*By Mr. Ross:*

733. In what year did that description first appear?—1838.

734. That was Lord Durham's commission. In subsequent changes from 1838 to 1867, the year of Confederation, the Government of the old Parliament of Canada exercised jurisdiction north of Lake Superior—did they not—in the region of Thunders Bay?—They did, I think, justifiably.

735. You say they did, according to the commission of Lord Durham?—They did notwithstanding the commission.

736. On your contention now, they would have no right to exercise jurisdiction north of Lake Superior, that is, it was outside their commission if they did. On what ground do you consider they exercised jurisdiction?—By the Act of 1803 and the Act of 1821, which were not repealed.

737. That Act of 1803 was the Act which gave them a criminal jurisdiction, and the Act of 1821 was confirmatory of that. But, besides, did not the two Provinces exercise jurisdiction in another way? Did they not expend money in the construction of works in that part of the country, on the Dawson route, for instance? How could they tax people of the old legislative union for the construction of public works outside of what was part of either the Province of Ontario or of Quebec?—I think they were justified in doing so, seeing that the jurisdiction of the country was entirely in their hands. I have discussed the subject very thoroughly in 1859 with the Colonial Minister, Lord Lytton, who coincided with me thoroughly in everything that is written in the report of 1857, heretofore referred to, and wished that Canada would go on and occupy the whole.

738. But still that would have no legal weight. We want to know the legal status of Ontario in the West?—It was the United Provinces of Upper and Lower

Canada that exercised that jurisdiction, and the law gave civil as well as criminal jurisdiction over that and the whole of the Indian territories.

739. Lord Durham's commission, according to your contention, would entitle him to exercise jurisdiction to the extreme east of Lake Superior. In the face of that Commission, however, he and successive governors have exercised jurisdiction all along the north shore. For instance, the uncle of my hon. friend (Mr. Robinson), entered into a treaty with the Indians along the north shore, and that is the treaty that sometimes gives us a little trouble, the treaty of 1850 with regard to the contention of the Hudson's Bay Company, because there is a tacit admission in that treaty that the company had a right to come down to the height of land for which they (the Canadian authorities) negotiated with the Indians for the disposal of a part of those lands. On what authority could they act if they did not feel their Commissions entitled them to go further west?—It is stated in the case made for Ontario in the present controversy, that this purchase was made under a special permission granted by the British Government in 1850. The height of land being the limit of that purchase creates no title in the territory beyond it for the Hudson's Bay Company, and the mere statement in the Treaty is only a part of the prevailing ignorance on the subject that had got hold of men's minds since 1821. Had the Treaty said territory covered by the "lease" instead of "charter," it would have been more accurate. The distinction had simply been lost sight of.

740. While you were in England, did you ever discuss these matters with other persons in authority besides Lord Lytton?—I have discussed this matter in regard to the boundaries, as regards the view I have taken of the past history of it in my reports, with the gentleman who had been principal geographer of the British Empire for a very lengthened period, Mr. Arrowsmith, and who had made all the maps and plans for the Hudson's Bay Company which designated our boundaries as being the Height of Land; and he entirely and absolutely concurred with me that there was no authority whatever for making the Height of Land the boundary. He said he had put that boundary, simply at their (the united Company's) request, upon the map of the old North-West Company of Canada, a copy of which I have referred to in the first part of my evidence as having been long of record in the Crown Lands Department.

*By Mr. Ross :*

741. What maps do you think the members of the English Parliament had before them when they passed the Quebec Act of 1774—when they then settled a boundary? I could not say, excepting from what information is before the Committee, more than that I presume all previous maps of the French and English were before them. I think the investigation made by Mr. Devine, which he has consolidated in the map now before the Committee, seems on the whole to be very correct.

742. I see you made some reference to the Mississippi as then known?

*Mr. Weldon:*—He says what was then the Mississippi is now the Missouri.

*Witness:*—All the maps, without exception, confirm that view.

*By Mr. Ross :*

743. You make the statement further in your evidence that a line drawn northward along the Mississippi, now the Missouri, would not reach the southern boundary of the Hudson's Bay Company's territory as then known. ?—Certainly not; neither would the line on the course of what is now recognised as the actual Mississippi strike the territory of the Hudson's Bay Company.

*By Mr. Robinson :*

744. It would go off to the west?—Yes.

*By Mr. Ross :*

745. And along the Missouri it would go further west of the Hudson's Bay Company's Territory?—Yes, very far; but by the Mississippi, as it is now, the line would go, though of course not so far, still a long way west of what was then recognized as the Hudson's Bay Company's territories.

746. Can a Governor's commission alter a boundary?—As an exercise of the royal prerogative, when the law specially allows it, I think so; where it is an ex-



tension out of territory, not otherwise organized, and the law does not forbid it, I think so too. I would beg to state that I give the answers without having any more interest in Quebec than in Ontario, and simply as an *expert* giving the only possible definition of the descriptions laid before me.

*By Mr. Trow :*

747. The intention of the Quebec Act in defining the western boundary was for the purpose of including certain settlements west of Lake Superior, was it not? could not say what the intention was in that way. There was a distinct province, Illinois at that period, which lies east of the Mississippi, and was undoubtedly part of New France, but may not have been part of Canada.

748. It was part of New France, but not of Illinois. The Mississippi was the boundary between New France and Louisiana?—It became the boundary between Canada and Louisiana by treaty afterwards.

749. What was called New France by the French extended to the Mississippi?—New France was the generic term for the whole of the French possessions, which included Louisiana.

750. But it did not include Louisiana?—It included Louisiana and Canada both; the whole was called New France.

*By Mr. Robinson :*

751. In your statement to us the other day you said that the Arbitrators, Sir Edward Thornton, Sir Francis Hincks and Chief Justice Harrison, had no proper case presented to them. I think you went as far as to say that they had no case at all before them. Why do you say that?—In reply to Mr. Robinson, I may remark that, in saying the case presented by the Dominion was no case at all, I do not wish to cast any imputation upon the learned gentleman whose name is at the case, with whom I am not acquainted, but who had, evidently, after a great deal of desultory reading, failed to seize the true facts of history bearing upon it, neither do I wish to impute any dereliction to the late Ministers who placed the case in his hands, and for some of whom I entertain the highest esteem, but simply that they had not made themselves masters of the subject in which they were only like some of their predecessors, for I cannot but remember that in 1858, after the report I had written one year previous was fully before the country, the then Provincial Secretary, speaking in Parliament as the mouth-piece of the Government, after a very eloquent speech on the beauties of the North-West Territories, and a truthful assertion of my conclusions that they were part of French Canada at the time of the cession in 1763, nevertheless read the description of the boundaries of the first Province of Quebec as conveying the only title we had, and declared that we were not legally entitled to a foot of territory beyond it. I asked him under what title we held Toronto, in which the Legislature was then sitting, which, of course, gentlemen here now are well aware, was not within the first Province of Quebec, but so great was the ignorance prevailing at the time he did not even know what I meant. I am bound to say therefore, that the Dominion case is utterly unsound and something more than that, for, after Canada, before Confederation, and the Dominion after it, had claimed the North-West Territories and acquired whatever interest the Hudson's Bay Company had there or elsewhere, it amounts to this, that, by the pressure of two powerful Governments we had compelled them to part with their possessions, and no acknowledged that their title was undisputable, that we had, in fact, bullied the gentlemen into parting with property for a song which was worth hundreds of millions, and made it the basis of an empire. To show how strong impressions sometimes get hold of men's minds that cannot easily be got rid of, I notice that my esteemed friend, the Deputy Minister of the Interior, has given evidence before this Committee in which he gives as a quotation from the Hudson's Bay Company charter, the following words:—"Extending over and including all lands and territories drained by the waters emptying into Hudson's Bay;" whereas there are not such words in it nor anything that, as I would translate that very absurd document, could possibly bear such a construction.

*By Mr. Ross :*

752. You say there are no such words in the charter?—There are no such words. You will find something else in the charter by which, provided they could reach it through Hudson's Straits, they could just as rightly claim Hong Kong, which Great Britain had since taken possession of. The charter provided that the company could make war on any heathen nation, and acquire their territory, but it restricted them from acquiring a right to any territory they found in possession of a Christian Prince or People.

*By Mr. Weldon :*

753. You gave evidence before a Committee in June, 1857. You then stated as follows, speaking of the De Reinhardt trial: "De Reinhardt was found guilty and sentenced to death, but although the court refused to re-consider its decision, yet the reasoning of Messrs. Stuart and Vallière was so clear that the judges deemed it expedient that the execution should be delayed till the decision of the Imperial Government could be had upon the question of jurisdiction. The actual reasons given by the Imperial Government I have not been able to get at, but I know that when the decision was given, the prisoner was released, and that the question submitted was that of jurisdiction, as above stated." Where did you get that information?—I searched for the despatch by which De Reinhardt had been released. I searched the Governor General's office, where I found an index giving its number; but that alone of all the papers was wanting from the place where it should have been. I have since heard that the late Colonel Gury of Quebec made a search in the records of the Quebec Court House, since burnt, and there discovered that the cause given for the release of De Reinhardt was that the murder resulted through what was known as a private war.

*By Mr. Royal :*

754. Between two civil companies?—Yes, the North-West and Hudson's Bay Companies. I am aware, otherwise, from reading other authorities on the subject, that it was known by the British Government as a private war.

*By Mr. Weldon :*

755. It seems that you were leaving the question of jurisdiction open here. The contention seems to have been whether the place where this murder was committed was in the Indian Territory or within the Province of Upper Canada. The whole question turned upon that, and Messrs. Stuart and Vallière's argument is entirely upon that point, and so was the decision of Chief Justice Sewell. I thought you might give us some information as to whether that question had been before the Imperial Government?—No doubt it had, but there appears to have been no decision other than that the man was released upon the other ground.

756. I see you, on the same occasion, when the question, "Have you made the early and present boundaries of Canada a particular subject of study; if so, state the result?" was put to you, your answer was, "The early boundaries of Canada or New France included, I think, the whole of Hudson's Bay, for I find all that part of the country granted to a trading company by the King of France, in a charter somewhat similar, but forty-three years earlier than the charter of the Hudson's Bay Company. How did you ascertain that?—It is in the history of the time that France had granted charters extending to the North Sea—wherever it might be found—previous to that. I have also shown in the document I had written previous to that evidence that such a charter was granted by France, and that the maps of Hudson's Bay produced by the French previous to the existence of the Hudson's Bay Company were the first that really showed the conformation of Hudson's Bay at all.

*By Mr. Royal :*

757. Those charters given by the French were merely trade licenses for a very short period—five years, I think?—Precisely.

*By Mr. Ross :*

758. You have no other written documents in your possession containing your opinions on the question than this report?—No. I discussed the subject a great deal and there are some documents both written and probably printed upon it) with the



authorities in England, both with Lord Lytton and the Duke of Newcastle, when he became Colonial Minister; and I may say I was also sustained by him in the view I have taken, as will be found by the English *Hansard*, in the speech he made in the House of Lords.

*By Mr. Ross :*

759 The general consensus of opinion here was that the northern boundary of Ontario was the Height of Land; Mr. Dawson evidently goes to the shore of Hudson's Bay?—I do that under the commission to Lord Durham. Previous to that I hold it only extended to such point as France occupied under the Treaty of Utrecht, in contradistinction to what was then ceded to England.

760. I am glad we have got that out. I wanted to know on what grounds you based that contention; you contend that we go now to the shore of Hudson's Bay, on Lord Durham's commission?—Precisely. We did before go to whatever might be considered to have been the boundary created by the Treaty of Utrecht, between the French possessions and the English; but the Height of Land was never made a boundary.

*By Mr. Weldon :*

761. Mr. Dawson's pretention is that the boundary of Upper Canada was defined by Lord Durham's Commission of 1838, was recognized and continued down to Confederation, and the Province of Ontario went into Confederation as the Province of Upper Canada, defined in Lord Durham's Commission?—Yes; the Ontario case, I would observe, accepted that definition on one point, but seems to evade it on the other.

*By Mr. Ross :*

762. I suppose it accepts it on the north?—Yes; but it seems to evade it on the west.

*By Mr. Weldon :*

763. I see in the Ontario case the description of Lower Canada taken from Lord Durham's Commission; but not the description of Upper Canada; we should also have a description of Upper Canada from Lord Durham's Commission?—I have put it in my previous evidence.

*By Mr. Royal :*

764. In conversation a few minutes ago, Mr. Chairman, you related the facts that led to the passing of the Imperial Act of 1803. Do you know anything further than was stated to the Committee?

*The Chairman :—*I have here a complete list of facts that led to it—the disturbances from 1765 to 1803.

765. *Mr. Royal :—*Some witnesses in their evidence stated what was not exactly correct regarding the reason for the passage of the Act.

*The Witness :—*I may here observe to the Committee that when I wrote this report and gave that evidence I was an officer of the Government, and had full access to all the papers in the Executive Council office, had seen the early manuscripts of trials and everything else there, and was quite aware that the disturbances referred to at the time of the passing of the Act of 1803 occurred from the shores of Lake Superior back through the interior to James' Bay, and that the disturbances which caused the second Act of the same nature to be passed in 1821, were the disturbances that occurred at Red River, where the Governor of the Hudson's Bay Company and some nineteen or twenty of his people were killed in battle. It was such incidents as these that caused these troubles to be recognized as a private war.

766. Can you tell us what effect the report you wrote in 1857 had upon the state of the case as it then stood?—I am very certain that, backed by the very energetic support of Mr. Cauchon, it had the effect of preventing the renewal of the lease of the Indian Territories to the Hudson's Bay Company, as I think the answer to the despatch from the Colonial Office would otherwise have been that we had no objection to the renewal of the lease, and its renewal would have been for 21 years, which would have shut us out of that country at least till it expired, say two years ago. There were many facts and circumstances, however, of that time that I do not know

that I can properly divulge without much consideration. I was not, of course, sworn to secrecy, but there are many things that a Minister may find it necessary to discuss with a confidential officer of the Department over which he presides, involving Cabinet secrets that require at least great circumspection on the part of such officer. I should like to add that having very strong convictions against the former pretensions of the Hudson's Bay Company (which are now but matters of history), any remark of mine that may seem harsh, does not in any way apply to individuals connected with that Company, from whom I have never received anything but the utmost courtesy, even to the extent of local assistance when pushing the opening of the route by the sending of the mail, and making preliminary improvements between Thunder Bay and Red River.

*By Mr. Robinson :*

767. Were you consulted by or did you furnish any information to the authorities of either the Local or Dominion Governments to be made use of by the Arbitrators in the matter?—No; I must say it very often seems to be the habit of Governments not to consult those who know most about the case that has to be dealt with.

The Committee then adjourned.

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## LIST OF DOCUMENTS

### TO THE APPENDIX.

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1. DeReinhard Case, 1818.
2. Case of John Mowat, 1809.
3. Ramsay, T. K., Q.C., Report on the Northern and Western Limits of Ontario.
4. MacMahon, Hugh, Q.C., Statement of case for the Dominion, and Supplement.
5. MacMahon, Hugh, Q.C., His argument.
6. Mowat, Hon. O., Attorney General for Ontario, Statement of case for Ontario.
7. Mowat, Hon. O., His argument before the Arbitrators.
8. Hodgins, Thomas, Q.C., His argument before the Arbitrators.
9. Preliminary Memorandum by the Hon. Wm. McDougall, C.B., for Ontario.
10. Memorandum by Mr. Wm. McD. Dawson on the North-West Territories of Canada, Hudson's Bay, the Indian Territories, and the questions of Boundary and Jurisdiction connected therewith 1857.
11. Evidence of Wm. McD. Dawson, from a report of a Committee of the Legislature, 1857. Crown Grant to the Hudson's Bay Company for the exclusive Trade with Indians.
12. Resolutions moved by Wm. McD. Dawson, 1st Session, 6th Parliament, 21st Viet., 1858.
13. Documents and Papers relating to Claims of Hudson's Bay Company.
14. Treaties, Conventions, &c.
15. Act 43rd, Geo. 3rd, Chapter 138.
16. Rupert's Land Act, 1868.
17. Proclamation of 1763.
18. North-Western Ontario, its Boundaries, Resources and Communications.
19. Extracts from Instructions to Lord Dorchester, 22nd December, 1774.
20. Extracts from Twiss' Oregon Question.
21. Letters of the Hon. Wm. McDougall, C.B., and Sir George E. Cartier, Bart., to Colonial Secretary, 16th January, and 8th February 1869.
22. Return of the expenditure on account of the North-Western Boundary of Ontario, from 1867 to 1879.
23. Award of the Arbitrators.

# APPENDIX

## TO THE

# REPORT OF THE SELECT COMMITTEE

## ON THE

# BOUNDARIES.

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### 1.—DE REINHARD'S CASE, 1818.

[Charles De Reinhard was tried in the District of Quebec, on the 18th day of May, 1818, before Chief Justice Sewell and Mr. Justice Bowen, under the authority of a Special Commission, issued by the Hon. John C. Sherbrooke, Governor of Lower Canada, dated 29th April, 1818, and authorizing such trial under the Act 43 Geo. III., Chap. 138, for murder committed at the Dalles, on the assumption that this place was situate in the Indian territory, or parts of America not within the limits of Upper or Lower Canada, or of any Civil Government of the United States of America; and the jurisdiction depended on whether the place where the murder was committed was within Upper Canada. The following evidence on this point was given :]—

#### THE EVIDENCE.

**WILLIAM SAX**, sworn.—I am a surveyor; I am acquainted, according to a map which I have here, with the limits of Upper Canada, that is to say, of the old Province of Quebec; the western limit, the mouth of the River Ohio, is in longitude  $88^{\circ} 50'$  west from Greenwich, and latitude  $37^{\circ} 10'$  north. That appears by a map which I have made and have in my hand, to be the latitude and longitude of the junction of the Ohio River with the Mississippi.

**Chief Justice Sewell**.—When you speak of the junction of the Ohio River with the Mississippi River, do you mean where the Ohio River empties itself into the banks of the Mississippi?

**Mr. Sax**.—That is the understanding, and the Statute provides also—

**Chief Justice Sewell**.—We do not require any information or assistance in the construction of the Statute; we require it as to the fact. The construction of the Statute, it is our province to decide on.

**Attorney-General**.—Would a line running north from the junction of the Ohio and Mississippi Rivers strike, in its passage to the Hudson's Bay Territory, the great lakes, and where would it strike Lake Superior? And where would it leave Fort William?

**Mr. Sax**.—Such a line, drawn due north, would strike Lake Superior on its passage, and at or about a degree east of Fort William, or perhaps three-quarters of a degree?

**Attorney-General**.—That is to say, the west end of Lake Superior?

**Mr. Sax**.—Yes, nearly so; when I say that such a line would strike east of Fort William, I mean that it would leave Fort William about three-quarters of a degree to the west of it. It is so laid down in all the maps.



Attorney-General.—From your knowledge of maps, will you then explain in French to the jury this line?

Mr. Sax having done so, continued his evidence:—I am acquainted with the River Winnipic by the maps, and it is between the 50th and 51st degree of north latitude. The Portage de Rats is in  $49\frac{3}{4}^{\circ}$  by this map, or  $49^{\circ} 45'$ , and longitude  $94^{\circ} 6'$  west from Greenwich, and the River Winnipic is consequently about  $5^{\circ}$  west of the line running north from the junction of the Rivers Ohio and Mississippi, and certainly without the old Province of Quebec.

Chief Justice Sewell.—What are you speaking of now?

Mr. Sax.—That a line, supposing it ran due north from the junction of the Ohio and Mississippi Rivers, would leave the River Winnipic five degrees out of the Province of Upper Canada,—not a northward line, but a due north line.

Attorney-General.—Do you mean to say that a northward line is not a north line?

Mr. Sax.—It is not always; it may be north by east or north by west, or north north-west, or many other points of the compass. A due north line is one that goes direct to the north pole without any deviation whatever.

Attorney-General.—And does not a northward line go to the north pole? If you had a northward line to run, would you not run it to the north pole?

Mr. Sax.—Perhaps I might and perhaps not; I would certainly run it northerly, though I might not run it due north.

Attorney-General.—What is to prevent you taking it due north? If you had a line to run from a given point till it struck a river, and thence to continue along the course of that river northward, would you call that drawing a northern line?

Mr. Sax.—Undoubtedly it would be a northern line, but not a due north line.

Attorney-General.—Would it not? Could it be east or west?

Mr. Sax.—It might according to circumstances be a north-eastward or north-westwardly line, and yet a northern line—that is a line having a northward course or drawing nearer to the north pole as it progressed, though not an astronomical north line.

Attorney-General.—Is not a north line a line northward?

Mr. Sax.—Certainly; a line running due north is undoubtedly a northward line.

Attorney-General.—And a line true north-westward you would call a north-westward line?

Mr. Sax.—Certainly; a line due north-west is a north-westward line, but a line, for instance, that runs towards the north, notwithstanding it may gain in its course more nothing than westing or easting, is not therefore necessarily a due north line, but is a northern or northward line.

Chief Justice Sewell.—I really do not comprehend the distinction; to say that a northward line is not a north line, I confess, appears to me to approach the "*reductio ad absurdum*." Suppose that we had a compass here, and from a given point I draw a line north-westward, that is to say, terminating at a point north-westward, would not that be a due north-west line?

Mr. Sax.—It would, if drawn due north-west; but if in drawing it you gained northerly, it would, from the course of its deviation, be a line northward, though not a north line.

Chief Justice Sewell.—Then its course northward must unquestionably be due north—if a line north-westwardly is a north-west line?

Mr. Vallière de St. Réal.—Your Honor will observe that he added, "but if it deviated so, as to 'gain a little north,' it would then be a northward line."

Chief Justice Sewell.—If a line is to be drawn from a given point of the compass, say from the west in a northward direction, to say that such a line would not be a due north line, appears to me to be a contradiction to the plainest principle of common sense, and totally irreconcilable. I will put the question to you again, sir. Do I understand you to say, that a line drawn from a given point northward is not a north line?

Mr. Sax.—Surveyors usually call lines running—

Chief Justice Sewell.—I am not asking you what surveyors usually call—I want to know whether in point of fact, a fact that any man can tell as well as a surveyor, whether a line from the eastern or western point of the compass, drawn northward, is, or is it not a north line? Just answer that question, yes or no, and then you may explain that answer in any way you think proper.

Mr. Sax.—It certainly must be, to a certain extent, a north line, but not a due north line.

Chief Justice Sewell.—Why not?

Mr. Sax.—A line drawn from any point, between two cardinal points of the compass direct to any cardinal point, is a due north or west line, as the case may be; but a line may be so drawn between two points as to be called by surveyors a northward or a southward line, as it may chance to gain in the course of running it upon that point of the compass to which it is approaching; as I might draw a line from a point north-westerly, but gaining in a northerly direction in its course, so that at its termination it would be a line northward, from having more northing there than at the point from which I started.

Chief Justice Sewell.—Would not a line drawn from a westerly point, one-half north and one-half east, be a due north-east line, or must not lines drawn from any point in one-half the compass between east and west be a north, and, in the other half, a south line?

Mr. Sax.—Certainly, while progressing north or south, but they might be gaining east or west.

Chief Justice Sewell.—Is it then equally true, that lines running east from points between north and south are due east lines?

Mr. Sax.—Yes, if progressing east.

Attorney-General.—Then they cannot be northward any more than north?

Mr. Sax.—An identical line from any point running a direct course east, is undoubtedly an eastern line, but if inclining in its course half north and half east it is a north-east line.

Chief Justice Sewell.—Am I to understand you that one and the same line can be a northern and eastern line?

Mr. Sax.—The same line may be a north-east line.

Chief Justice Sewell.—Let me be clearly understood by you, because at present I do not at all comprehend what you mean. Taking as a point of departure a centre, and travelling on the radius of a circle, would not the line, according to what you say, be at one and the same time a due north-east and a due north-west line—which appears to me completely a "*reductio ad absurdum*," though you certainly have said so.

Attorney-General.—If your Honor will permit me, I will ask him a question.—If you were directed simply to draw a boundary line northward, would you qualify it in any way by drawing it to the east or west, or would you go as nearly in a direct north course as possible?

Which question being repeated in French—

Mr. Sax.—If I were directed to draw a northward line without any other instruction, I should draw it as due north as I could. It would also depend upon whether I was desired to draw it astronomically or magnetically, for the variations between an astronomical and magnetic line extend in some places from twenty to thirty degrees, and in some places they agree. The astronomical line is the true parallel.

Attorney-General.—But whether you run the line astronomically or magnetically, still in running an unqualified northward line, you would get as much to the north as you could?

Mr. Sax.—Yes, if I had to draw a line northward, without other instruction, I should draw it due north, either astronomically or magnetically; magnetically, if there was any variation, and astronomically if there was none.

Attorney-General.—Will the Court have the goodness to take that down? Now, sir, would a line drawn due west from the Portage des Rats, strike the River Mississippi?



Mr. Sax.—A line drawn due west from the Portage des Rats would never strike it at all.

Chief Justice Sewell.—What line are you speaking of now—the American line?

Attorney-General.—Yes, your Honor. Well, but if a line was drawn from Portage des Rats, any way to the Mississippi, would it in its passage strike the Lake or River Winnipic, or how would it leave them?

Mr. Sax.—A line drawn from Portage des Rats to the River Mississippi would leave the whole of the River Winnipic to the north-west of such a line.

Chief Justice Sewell.—But Portage des Rats is not the point of departure; it is “the most north-western point of the Lake of the Woods” which we want.

Attorney-General.—The most north-western corner of the Lake of the Woods is Portage des Rats. Do not the English and American maps agree in that particular?

Mr. Sax.—Yes; they both make that the most north-western point of the Lake of the Woods; and a line drawn from there to the Mississippi would leave both the Lake and River Winnipic entirely to the north-west of it.

Attorney-General.—And if a line were drawn due west, as the Americans contend it ought to be, would the effect be the same?

Mr. Sax.—Yes; a line drawn due west would leave the whole of the River Winnipic to the north-west.

[Mellish's Map of the United States produced by the Attorney-General.]

Attorney-General.—Are you acquainted with the map which Mr. Mellish has published under the auspices of the Government of the United States? Look at it, if you please, and tell the Court and the gentlemen of the jury how it lays down the Portage des Rats or the River Winnipic.

Mr. Sax.—The map leaves it wholly to the north-west, excepting perhaps a particular elbow, where the river runs into the Lake of the Woods.

Attorney-General.—It must be so entirely, for if not, you do not draw your line correctly after the Statute; it must be from the dead water of the lake you start, or you take your departure from a river.

Mr. Sax.—It may be and actually is the proper point of departure at the very point where the two join; and that is in conformity with the best charts or maps, both English and American.

Attorney-General.—Will your Honor please to take that down?

*Cross-examined by Mr. Vallière de St. Réal.*

Mr. Sax.—I have seen many charts and maps, and it is from them I derive my knowledge of the latitudes and longitudes of which I spoke. The maps of Jeffreys and Bouchette, I believe, agree, and in these maps the western limit of the old Province of Quebec runs from the junction of the Ohio and the Mississippi, following the Mississippi until its source, which is called Turtle Lake, in latitude  $41^{\circ} 38'$  north, and longitude  $94^{\circ}$ , or more correctly,  $95^{\circ}$  west.

Mr. Vallière de St. Réal.—Of Greenwich?

Mr. Sax.—Yes, west from Greenwich.

Mr. Justice Bowen.—What did you say was the latitude?

Mr. Sax.— $47^{\circ} 38'$  north.

Chief Justice Sewell.—Do I understand you right, sir, when I take, you say that the head of the Mississippi in Turtle Lake has about  $47^{\circ} 38'$  northern latitude, and about  $95^{\circ}$  western longitude, calculating it from the meridian of Greenwich?

Mr. Sax.—Yes, that is about the latitude and longitude.

Mr. Justice Bowen.—From whence does the line go?

Mr. Vallière de St. Réal.—Northward, or due north, is it?

Attorney-General.—I beg my learned friend will permit the Court to put their own questions as they think proper.

Chief Justice Sewell.—You are certainly right. The Court can have no desire but that which is common to all parties—that of obtaining truly and correctly the facts of the case, and if, Mr. Vallière, the Court does not obtain thereby the information you think important to obtain, you can extract it yourself. Our question does not deprive you of your right of cross-examination. How does the line run?

Mr. Sax—From the source of the River Mississippi it runs by a line due north to Hudson's Bay. It is thus down in Bouchette's map—it stops in Jeffrey's map at Turtle Lake—and consequently it will leave the source (beginning) of the Lake of the Woods to the east of such a line, and the Dalles is also to the east.

Mr. Vallière de St. Réal—You only know that from maps, I believe; you were never there, I imagine?

Mr. Sax—I was never there; it is only from maps that I speak.

Mr. Vallière de St. Réal—I have done with Mr. Sax.

Attorney-General—Respecting these maps—what nation does Jeffreys belong to?

Mr. Sax—Jeffreys is an English author or geographer.

Mr. Vallière de St. Réal—I wish that to be taken down.

Attorney-General—Where was his map published?

Mr. Sax—I do not know; it does not mention on the map.

Mr. JOSEPH BOUCHETTE, jun., sworn:—

Attorney-General—You, sir, are, I believe, Deputy Surveyor-General of this Province, and can give us the western line of Upper Canada?

Mr. Bouchette—I am Deputy Surveyor-General of this Province. The western limit of Upper Canada is a line running due north from the junction of the Rivers Ohio and Mississippi to the southern limits of the Bay of Fundy.

Attorney-General—Not Fundy, I believe?

Mr. Bouchette—No, Hudson's Bay; and the latitude of the junction of those rivers is  $37^{\circ} 10'$  north, and the longitude is  $88^{\circ} 53'$  west from the meridian of Greenwich; and this line will leave the whole of the River Winnipic to the west. The Portage des Rats is in latitude  $49^{\circ} 51'$  north, and longitude  $94^{\circ} 10'$  west from Greenwich.

Attorney-General—Do you know the Dalles?

Mr. Bouchette—I have discovered it laid down in Arrowsmith's chart, as being about twelve miles above, that is further north than Portage des Rats. The place called the Dalles is twelve miles to the north of Portage des Rats, according to Arrowsmith. The most north-western point of the Lake of the Woods is in latitude  $49^{\circ} 28'$  north, and longitude  $94^{\circ} 25'$  west from Greenwich.

Attorney-General—How would a line drawn from—here to the Mississippi leave the Winnipic as relates to the United States of America?

Mr. Bouchette—It would leave the whole of the River Winnipic to the north, and consequently out of the limits of the United States of America; it would leave the head of the Mississippi to the south.

Attorney-General—Yes, but I want the Winnipic only; and also tell us what would be the effect of a line drawn due west from the most north-western point of the Lake of the Woods?

Mr. Bouchette—A line running from the most north-western point of the Lake of the Woods to any part of the River Mississippi will leave the whole of the River Winnipic to the north, and the same thing will happen if the line be drawn due west; and consequently that river is without the boundaries of the United States of America.

Attorney-General—Now, sir, you say you know the Dalles?

Mr. Bouchette—According to Mr. Arrowsmith's map, they are four leagues to the north of Portage des Rats, and consequently not within the United States.

Chief Justice Sewell—The Dalles, are they on the Winnipic?

Mr. Bouchette—Yes; to the north of the Lake of the Woods, and also of Portage des Rats.

*Cross-examined by Mr. Stuart.*

Mr. Stuart—What age are you, sir?

Mr. Bouchette—I am nineteen years old.

Mr. Stuart—I observe you have a map before you; what map is it?

Mr. Bouchette—It is the map lately published by my father, the Surveyor-General.



Mr. Stuart—I believe you were never at any of these places beyond Upper Canada, or at the mouth of the Ohio, or ever out of Lower Canada; never, I believe, in the United States?

Mr. Bouchette—I never was at the mouth of the River Ohio, nor at the Lake of the Woods, nor at the River Winnipic; I have been out of Lower Canada and in the United States, but not in that part. My sole knowledge of the latitudes and longitudes is derived from my father's map now before me, and Mr. Arrowsmith's, published in 1795.

Mr. Stuart—You have spoken of a line as being the boundary of Upper Canada. Does it appear upon your father's map?

Mr. Bouchette—The green line upon the manuscript map before me prolonged from longitude  $88^{\circ} 58'$  west, and running due north, was copied from a map by Emanuel Bowen, in 1775, at London. It runs due north from the confluence of the rivers. In other maps the western limit of Upper Canada is drawn as running from the mouth of the River Ohio in the Mississippi until its source in Turtle Lake.

Mr. Stuart—Here is a purple line; what does that show?

Mr. Bouchette—That is principally for a heading to the map; it is, however, copied from some map, but I do not recollect of what geography.

Mr. Stuart—I observe another line, but I hardly know what color to call it (though blue, I believe) as marking some boundary.

Mr. Bouchette—It is a line denoting the boundary fixed by the Treaty of Utrecht, and is taken also from Emanuel Bowen, and there is also a line in the map taken from Bennett's, being the boundary of the Hudson's Bay Territory.

Mr. Stuart—I imagine, sir, you know nothing of the correctness of any line under the Treaty of Utrecht?

Mr. Bouchette—No; I have read the Treaty, that is all.

Mr. Stuart—The same, I presume, with respect to the Hudson's Bay Territory?

Mr. Bouchette—Yes, certainly; I never was there.

Attorney-General—I really do not see what we have to do with the Hudson's Bay Territory, or Mr. Bouchette's knowledge of it.

Mr. Stuart—It may probably appear very immaterial to my learned friend, the Attorney-General, but it is very material to us.

(The map was here handed to the Court.)

Mr. Justice Bowen—From what geographer is the south boundary of Hudson's Bay taken?

Mr. Bouchette—From Emanuel Bowen.

Chief Justice Sewell—I thought, and you certainly did say, just now, that that line was copied from Bennett?

Mr. Bouchette—No, sir; the line from Bennett is the line running from St. Croix River to the highlands, and thence along them.

Chief Justice Sewell—Here is a line on  $49^{\circ}$  latitude.

Mr. Bouchette—That is from Emanuel Bowen also, and drawn by the Commissioners, under the Treaty of Utrecht, and the line colored violet is the southern limit of the territory of Hudson's Bay, according to Emanuel Bowen's map.

WM. BACHELOR COLTMAN, Esq., sworn:—

Attorney-General—Are you, sir, a magistrate for the Indian territories as well as for this district?

Mr. Colman—I am a magistrate for this district and a Commissioner in the Indian Territory.

Mr. Justice Bowen—Let the examination be in French, if you please.

Attorney-General—Have you been in the Indian Territory, and when?

Mr. Colman—I have been in the Indian Territories; I was there last year.

Attorney-General—What do you consider the most north-west point of the Lake of the Woods?

Mr. Colman—My mind being occupied by the business of my mission, I did not make any particular local observations, but I always understood, and I myself consider the Portage des Rats to be the most north-western part of the Lake of the

Woods, and that, also, according to what I observed; but I had no opportunity of making exact observations on the spot.

Attorney-General—You have, no doubt, a knowledge of the River Winnipic. Does it run out of the Lake of the Woods or into it?

Mr. Coltman—It is true that the River Winnipic runs out of the Lake of the Woods and into Lake Winnipic.

Attorney-General—What is the distance between them?

Mr. Coltman—I cannot say, exactly.

Attorney-General—Not exactly; but how many leagues do you think—twenty or thirty?

Mr. Coltman—I think about one hundred leagues; probably from eighty to a hundred leagues.

Attorney-General—What is the general course of the River Winnipic?

Mr. Coltman—The general course of the River Winnipic is north-west, or about that course; but it is necessary that I should repeat that I had no time to make particular observations.

Attorney-General—Is any part south of a line drawn due west from the north-west angle of the Lake of the Woods?

Mr. Coltman—I think assuredly not. I do not believe that any part of the River Winnipic would be to the south of a line running west from the most north-western point of the Lake of the Woods, or at most a very small portion.

Attorney-General—It is hardly necessary to ask you if a line drawn from that point to the Mississippi would leave any part of the Winnipic to the south?

Mr. Coltman—Without doubt it would not. It is more to the south, and a line running from the Lake of the Woods to the Mississippi will leave the whole of the River Winnipic to the north-west of such a line.

Chief Justice Sewell—Such a line must necessarily run due south.

Attorney-General—Do you know a place called the Dalles?

Mr. Coltman—I do know a place called the Dalles; I passed it twice.

Chief Justice Sewell—Are the Dalles upon the River Winnipic?

Mr. Coltman—The spot called the Dalles is part of that river.

Attorney-General—At what distance are the Dalles from the Portage des Rats?

Mr. Coltman—I cannot say with accuracy, being always accustomed to read whilst travelling in a canoe in the Indian countries; but the places are not very near to each other; they are, I should think, at the distance of two or three hours' march.

Attorney-General—At what rate, sir, do you generally travel in the canoes?

Mr. Coltman—We go just according to the currents we meet with; our progress is entirely regulated by them, but perhaps generally a league and a-half or two leagues per hour.

Chief Justice Sewell—Then it is perhaps about fourteen miles?

Mr. Coltman—I should think it more; I should imagine it to be about five or six leagues from Portage des Rats.

Mr. Justice Bowen—To the north, sir, of Portage des Rats and Lac des Bois?

Mr. Coltman—It is by a line running to the north with a little westing, and they are distant from five to six leagues, I believe, from Portage des Rats and the Lake of the Woods.

Attorney-General—Are you, sir, acquainted with the place where Owen Keveny was killed, or said to be killed?

Mr. Stuart—I object to that question being put, for, if answered, it could not be made evidence. The place must have a name, and must be identified before any question can be put relative to anything whatever that may be supposed to have occurred there.

Chief Justice Sewell—It can be a matter of no consequence to put the question; we know enough of this case to know that if the murder was committed at all, it was committed at the Dalles, or very near to them; but you must first establish the fact.

Attorney-General—For the present I have done with Mr. Coltman, reserving to myself the right hereafter, should it be necessary, to examine Mr. Coltman again.



Chief Justice Sewell—Certainly, Mr. Attorney-General.

*Cross-examined by Mr. Stuart:—*

Mr. Stuart—You speak, I think you have said, Mr. Coltman, about the boundaries and other places you have mentioned in your examination in chief, only from belief?

Mr. Coltman—I speak about the lines and other places only from belief.

Chief Justice Sewell—But from having been there also?

Mr. Stewart—Yes, your Honor; but Mr. Coltman adds to his having been there from belief only. Will you give your former answer to the jury, in French, sir?

Mr. Coltman—I speak only according to my belief, being generally engaged in reading whilst travelling in those parts, and I had not an opportunity of making particular observations in the localities of the River Winnipic.

Mr. Stuart—Am I to understand you as speaking in the same way when you say that the Portage des Rats is the most north-western point of the Lake of the Woods?

Mr. Coltman—Yes; I speak according to the same belief, a belief likewise founded upon this circumstance. I was told that it was the most north-western point, and when I passed it I saw nothing that could make me call this in doubt. I was informed that that was the point whence the boundary line ran between the United States of America and the English, agreeably to the treaty of 1783.

Mr. Stuart—Can you say, sir, where it was you were told this, or at what time; whether before or after passing it?

Mr. Coltman—I cannot say, but it was on the passage or during the time I was in the upper country, that I was informed it was the most north-western point of the Lake of the Woods.

Mr. Stuart—You made no astronomical observations, or any other, so as accurately to ascertain the latitudes and longitudes?

Mr. Coltman—None whatever; my only observations were those of the eye, in passing accidental remarks.

Chief Justice Sewell—Then, I will add, sir, “according to my observations or remarks made in passing.”

Mr. Stuart—Your Honor will remark that my question was not only whether Mr. Coltman made any astronomical observations on the places, but also whether they came under his eye in such a manner as accurately to observe these two places, and Mr. Coltman’s answer is in the negative—they did not.

Chief Justice Sewell—You spoke of Portage des Rats.

Mr. Stuart—I spoke, or intended to speak, of both places, your Honor, and Mr. Coltman’s answer referred to both. Is not Fort William, sir, reputed generally to be in the Province of Upper Canada?

Mr. Coltman—Yes; Fort William is usually considered to be in the Province of Upper Canada, and I understand it to be so.

Solicitor-General—I submit to your Honor that there is nothing in this case to which this can apply.

Mr. Stuart—We are not called upon at present to show its application; it is a fact, and therefore evidence.

Solicitor-General—But I contend that my learned friend, Mr. Stuart, ought to show how he intends to apply evidence, which *prima facie* has no bearing on the case, before he is entitled to proceed in such a course of examination; I therefore thought it right to check it in the commencement.

Chief Justice Sewell—All that Mr. Stuart has obtained is the naked fact that Fort William is, according to general repute, in Upper Canada. Whether any or what use he may propose to make of it, we cannot say; as a fact, it is evidence.

Mr. Stuart—Do not writs issue in the Western District of Upper Canada on that presumption?

Mr. Coltman—The Chief Justice of Upper Canada told me—

Solicitor-General—You must not tell us that, Mr. Coltman.

Mr. Stuart.—I will ask you, sir, is it not a matter of *public notoriety*, that the processes of the magistrates of the Western District are issued for offences at Fort William, and executed there?

Mr. Coltman—Yes, it is a matter of notoriety that writs are issued by the magistrates of the Western District of Upper Canada to be executed at Fort William.

Mr. Stuart—You have traversed a good deal, sir, in that country; did you observe any vestiges of French Forts above Fort William in your way to Red River?

Mr. Coltman—I do not recollect that I did; I do not think I did.

Chief Justice Sewell—Is it worth while to take that?

Mr. Stuart—No, it is not necessary. I have done with Mr. Coltman at present. We propose to examine him on the defence.

SAMUEL GALE, Esq., sworn:—

Attorney-General—You have been in the Indian Territory, I believe, sir?

Mr. Gale—I was in the Indian Territory last summer.

Attorney-General—Did you go down the River Winnipic?

Mr. Gale—Yes, I went down the River Winnipic, from the Lake of the Woods to within Lake Winnipic.

Attorney-General—Do you know the Portage des Rats?

Mr. Gale—I do know the Portage des Rats.

Attorney-General—What course has the River Winnipic from Portage des Rats to Lake Winnipic?

Mr. Gale—Its course from Portage des Rats to lake Winnipic is the same as before, north of north-west.

Chief Justice Sewell—North, tending a little west.

Mr. Gale—Yes; nevertheless, less to the west than to the north.

Attorney-General—Then the whole is north, is it not?

Mr. Gale—I should not like to speak positively, but I believe that a line drawn from the source (beginning) of the River Winnipic to Lake Winnipic, would be to the north of north-west; but, as a lawyer, I would not say that such a line was a north line.

Chief Justice Sewell—From what we have heard this morning, I should think it would puzzle a dozen lawyers to describe a line.

Attorney-General—Are you, sir, acquainted with the Hudson's Bay Territory and its line of separation from the Province of Upper Canada, by maps or any other way?

Mr. Gale—I have never seen a map in which they were correctly delineated, according to my idea.

Attorney-General—By the Treaty of Utrecht, was not the boundary established?

Mr. Gale—I know that by the Treaty of Utrecht no line was given nor any boundary fixed as to the Hudson's Bay Territory south, or on the side of Upper Canada. I have examined that treaty for the purpose of ascertaining. I do not now that any line has been drawn between the territories of Hudson's Bay and Canada in pursuance of the Treaty of Utrecht, and that treaty did not describe a boundary line.

*Cross examined by Mr. Stuart:—*

Mr. Stuart—Do you mean, sir, to say positively that no part of the River Winnipic, is in a more southern latitude than Portage des Rats?

Mr. Gale—I, perhaps, do not know precisely where it commences. I considered that I entered it at Portage des Rats, and I do not think that any part is more south than it may, perhaps, begin a mile or two before.

Mr. Stuart—Will you undertake to say positively one way or the other.

Mr. Gale—I should not like to be positive, but I will mention why I think I am correct as to its course, [Intimated to speak French.] I had a small compass before me, and I observed that the general course of the River Winnipic is, as I have said, for a short distance, more north than afterwards.

Chief Justice Sewell—For what distance, sir, does its progress preserve the more northerly course?



Mr. Gale —Perhaps about ten or twelve leagues from Portage des Rats. The whole course of the river is certainly not due north, but if a line was drawn from its commencement at the one lake to its discharging itself into the other, the course of the river would certainly be more north than any other.

#### THE ARGUMENT.

The following was the argument on the point on a subsequent day:—

Mr. Stuart—In excepting to the jurisdiction of the Court, I beg leave to remark that the exception is made as an exception by the counsel of the prisoner only. Our opposition does not arise from any apprehension as to the verdict of the jury ultimately being that De Reinhard is innocent; but we are counsel for the prisoner, and your Honors know that even of technical objections, where the life of a defendant is at stake, it is the duty of his counsel to avail themselves; and although they entertain no doubt of the acquittal of the prisoner, in the duty which, as his legal advisers, we have to perform, and a trying and distressing duty it is, we feel ourselves compelled to neglect nothing that, by possibility, can lead to his acquittal; we therefore except to the jurisdiction of the Court; and as I shall have the honor of being followed by a learned friend with me, who has bestowed considerable time and attention to the subject, I shall trouble the Court very shortly in opening, as I shall have an opportunity of again addressing the Court in reply to the Crown officers. The first objection I shall have the honor to submit is, that the offence charged in the indictment, if committed at all, was not committed in the Indian Territory, as alleged, but in His Majesty's Province of Upper Canada.

Chief Justice Sewell—Will you stay one moment. If I understand you correctly, it is a geographical objection you make. You argue that the spot, "en haut des Dalles," is not in the Indian Territory, but in the Province of Upper Canada?

Mr. Stewart—That is my proposition, and in support of it, I proceed to remark that the first enactment relative to the management of this portion of His Majesty's dominions took place in 1763. It is known to all of us, that the conquest of this portion of North America by the British arms took place in 1759 and 1760, but from that period to 1763, nothing was done to provide a government for, or to regulate this conquered country. In that year (1763) a province called Quebec was created by proclamation. The affairs of this territory, notwithstanding the proclamation of 1763, remained in a very unsettled state till the year 1783, when the whole of the country called Canada was ceded to the English, who have retained possession ever since. According to the most respectable historians, we contend that the portion of country thus ceded was exceedingly extensive, going, agreeably to some writers, as far as the River Ohio. The pretensions of the French, as we gather from history, carried them into countries distant, remote, and, in fact, unconnected altogether with the province created in 1763. The people of Montreal and Quebec, we shall show, had long traded in those wilds, which are now fancifully called the Hudson's Bay Territory, and from which, after an uninterrupted enjoyment of traffic for ages by the French traders, it is now sought to exclude enterprise and competition. It must be apparent to every one, that after the conquest, this immense tract of country required a government adapted to the change which had taken place in its circumstances by becoming a province of another nation. Its remote situation from the parent state rendered it impossible as well as unadvisable to legislate hastily for its necessities, but the Parliament proceeded to provide what it stood most in need of. Accordingly, by the 14th of the King, the Province of Quebec was enlarged, and here let me remark that a great deal of the misapprehension which exists on the subject, arises from confounding the Province of Quebec as thus erected and enlarged, with what, under the French régime, was denominated Canada. This Act merely provided a government for a portion of the conquered country, as will immediately appear on referring to history. Adverting to the 14th of the King, the Act of 1774, it will be seen that the country erected and enlarged thereby into the Province of Quebec was not commensurate to the country known by the name of Canada as a

French colony, and recognized as such by the French and British Governments. The object of this legislative provision was to provide a government for that portion of His Majesty's Province whose necessities required it. It was to establish a temporary government for a portion of an immense continent larger than England herself that this Act of the British Parliament provided. As settlers pushed themselves into the settlements of Upper Canada, as civilization extended its stride, it became necessary to adopt a government for the whole, and the interval from 1774 to 1791 afforded time to maturely form a suitable government for the immense territory known as Old Canada.

Chief Justice Sewell—You are making a small mistake; it was not to provide a government for Old Canada that the Act of 1791 provided, but for the new Province of Quebec.

Mr. Stewart—I know the Act of 1791 mentions the Province of Quebec, and it speaks also of Canada. The proclamation issued in consequence of this Act, I contend, must be construed liberally. It must be looked at, not as a deed of property, in which only a minute survey can be taken; we must not look at it like lawyers, in our study; we must not contemplate it as the act of an attorney surrounded by his musty papers and parchments; but we must view it as the act of great and enlightened statesmen legislating for the population of an immense and distant territory, with whose wants they were acquainted, and whose affections they were desirous of securing by liberal and magnanimous policy. But even looking into this proclamation strictly and minutely, we shall find this country, where it is alleged the offence was committed, to be strictly and minutely the Province of Upper Canada, agreeably to the Act of 1791, upon which the proclamation was grounded. This Act, in providing for the more suitable government of the province, created by the former one of 1774, divided it into two parts, and we think, even in a strict construction of the provisions of that Statute, and the proclamation issued in consequence of it, that if this offence had been committed at all, it had been committed in the Province of Upper Canada, and consequently beyond the jurisdiction of this Court. But let us look into this Act and proclamation with a broad, liberal and enlarged disposition, and we must arrive at the same conclusion, that, agreeably to this Act, this country must form a part of the Province of Upper Canada. I am well aware that in the preamble to this Act the Province of Quebec is adverted to, but the preambles of Acts of Parliament are never looked at as explaining the design of the Legislature, except doubt arises in the construction of the enacting clauses. It is almost superfluous to remark that, for ascertaining the spirit of an Act of Parliament, we must refer to its enacting clauses; if they are clear, there is no necessity for reference to the preamble, which is but an introduction, a sort of preface setting forth the necessity for legislative provision on the subject of the Act, but not making the provision. On the other hand, I freely admit, if the words of the Act are uncertain, if different constructions may be put on the enacting sections, then we ought to go back to the preamble for the intention of the Legislature; but that should never be done except doubt and uncertainty prevail in the body of the Act. Adopting this sound principle, let us take up the Act we are at this moment considering, and we shall find it so clear that misunderstanding cannot exist for a moment. In the proclamation issued in consequence of the 31st of the King, Cap. 31, we find the boundaries of His Majesty's Province of Upper Canada thus set forth: After a short introduction, stating that His Majesty had thought fit, by and with the advice of his Privy Council, by an Order of Council to divide his Province of Quebec into two distinct Provinces, to be called the Province of Upper Canada and the Province of Lower Canada, by separating the said line of Provinces, according to the following line of division, viz.: "To commence at a stone boundary on the north bank of Lake St. Francis, at the cove west of Pointe au Beaudet, in the limit between the Township of Lancaster and the seigneurie of New Longueuil, running along the said limit in the direction of north, thirty-four degrees west, to the westernmost angle of the said seigneurie of New Longueuil, thence along the north-western boundary of the seigneurie of Vaudreuil, running north, twenty-five degrees east, until it strikes the



Ottawas River, to ascend the said river into the Lake Temiscaming, and from the head of the said lake, by a line drawn due north, until it strikes the boundary line of Hudson's Bay, including all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada."

Now, what was the utmost extent of the country commonly called or known by the name of Canada, we all know. It is that territory conquered by British arms in 1759, and ceded finally in 1763 to the British Crown; it was Canada, recognized as such in treaties of peace, and other most important documents entered into between France and England. This is Canada, the whole of which, after the Act of the 31st of the King, by the advice of His Privy Council, His Majesty declared it his royal will and pleasure, should form the Province of Upper Canada, with the exception of the comparatively small part situated to the north and east of those boundaries, which constitutes the Province of Lower Canada. The Province of Quebec was quite another thing, and could not have been meant as designating the boundaries of Upper Canada. If that had been intended to form its limits, that is the limits of the new Province, the course was simple and easy; it was to have said, the utmost extent of country commonly known as His Majesty's Province of Quebec; but that is not the case; the boon was not so circumscribed. Let us, now, for a moment, examine the fact strictly and minutely, according to rigorous municipal principles, and we shall, I think, arrive at a similar result. His Majesty's Province of Quebec was always defined, whereas Canada was more undefined. Had the Province of Quebec been intended as exhibiting the proposed boundaries of the about-to-be-created Province, a word could have sufficed to express His Majesty's pleasure. It would merely have been necessary to have referred to the royal proclamation of 1763, founded on the Treaty of Paris, in conjunction with the Act of 1774, and we should immediately have known the extent of Upper Canada; but it is manifest that such was not the intention, but that instead of the then Province of Quebec as established by the Act of 1774, it was intended, as clearly expressed in the proclamation issued in consequence of the 31st of the King—the Act by which it was constituted a Province—that Upper Canada was to include "all the territory to the westward and southward of said line" (the line of its boundaries), "to the utmost extent of the country commonly called or known by the name of Canada." I am fully aware that I may be told that in the preamble of this Act, and of the proclamation, the term "His Majesty's Province of Quebec," is made use of. It is almost unnecessary for me again to remark that the preambles of Acts of Parliament are, in general, loosely and vaguely drawn up, and ought to form no criterion by which to estimate the objects contemplated by the Acts themselves. That this is the case is known to every lawyer and every legislature. It is to the enacting clauses of any Statute that we must refer to ascertain with accuracy the provisions of the Act. Adopting this certain rule for our guide here, we have a clear manifestation of the intention of Parliament in the Act of 1791; it was to create two Provinces of Canada, and in defining the limits of the Upper, it declares that it shall, in a certain direction, include "the utmost extent of the country commonly called" what? the Province of Quebec? no; it shall include "the utmost extent of country commonly called and known by the name of Canada;" the utmost extent of that country which, as I have before remarked, was the conquest of British valor in 1759, by force of arms, and which was finally ceded to Britain by the Treaty of Paris, of 1763, of that immense territory which has never, by any treaty, been surrendered, which as it is, and has from the time of its discovery, as well as its cession, been known as Canada, must be the territory which was intended by this municipal enactment to form the Province of Upper Canada. That being the case (and I think it is only the construction even in a minute point of view, that can with propriety be given to the Statute), we find that the Dalles was strictly within the Province of Upper Canada, consequently out of the jurisdiction of this Court, and the offence charged, if committed at all, is not cognizable under the Act upon which the indictment is founded.

I come now to the more broad and liberal interpretation of the Act, and I shall, as I apprehend, have no difficulty in showing that we can not arrive at any other conclusion. The 14th of the King was evidently intended to provide a temporary government for that part of the newly acquired territory which stood most in need of it. It was passed at a season of great difficulty, when anxiety and alarm pervaded all classes of society in England relative to the issue of the disputes between the parent state and those of the colonies which she has since acknowledged as the United States of America; at a period when the intercourse between the Province and the Mother Country was so limited that it could hardly be said to belong to it. Such was the moment in which the Act erecting the Province of Quebec was passed—an Act whose temporary nature may be clearly deduced upon a single reference thereto. This Province was to subsist only by the Act of 1774, till the King should see fit to alter its limits. In 1791, the situation of affairs relative to this portion of the British possessions was widely different, and the British Parliament proceeded to form a people whose loyalty during a contest which had severed such numerous colonies from the Dominion of Britain, had well entitled them to be distinguished, and distinguishing privileges secured to them, by the munificent Act of 1791. Refer to the Acts of 1774 and 1791, and surveying the difference, is it possible for a moment to imagine that the Government of 1791 intended only to legislate for a part of Canada. Is it, I would ask, reasonable to consider that the Minister of a great nation such as England—contemplating an extensive and valuable, though distant territory, belonging alike by conquest and affection to the Mother Country, and entitled to protection in time of war from its superior strength in time of peace from its extensive and unequalled trade, entitled to receive and have secured to it the due administration of justice and the unrestricted enjoyment of religious freedom,—as it, I ask, reasonable to suppose that from 1763 to 1791, the great men who presided over the Councils of Britain, intended at that period to propose a Government for a part of Canada? To suppose so is to suppose they were sleeping at their post. Can I, I ask, be imagined that a Minister could be found so regardless of his duty, so ignorant of the necessities, so insensible to the loyalty of this country, or so negligent of the interests of his master as in 1791 to propose a Government to a *part* of Canada? We cannot suppose it; they have not so neglected us. They have given us a Government, and a constitution superior to any on earth, excepting their own, after which it was modelled; a Government suited to our necessities and gained by our unshaken and persevering loyalty, when revolution tore our sister Provinces from their allegiance, and strove to associate us in the revolt. I ask them, is it for a moment to be believed that such magnanimity would be tarnished by these advantages being confirmed to only a part of a people of the same blood, equally brave, loyal and grateful, and equally standing in need of, and equally entitled to all these privileges? If any should be found disposed to support by argument a contrary opinion, they ought to be confident before they make so heavy a charge as is involved herein, that they can substantiate it beyond the power of contradiction. But there is no occasion to apprehend such an argument, for the proclamation is clear as the noonday sun upon the subject. It tells us that the Act of 1791 has provided a liberal and equitable, and a permanent Government for the brave, the loyal and grateful population of an extensive tract of country, within certain latitudes and longitudes, including all the territory to the westward and southward of a line drawn due north from the head of the Lake Temiscaming until it strikes the boundary of Hudson's Bay, to the utmost extent of the country commonly called or known by the name of Canada." What that country consisted in I have had the honor of submitting to the Court, in the early part of the argument I have had the honor of addressing to the Court. In conclusion, I contend on this part or view of the subject, namely, the broad and liberal construction of the Act of 1791, that by Canada must be meant Canada as known to the French, from whom it was taken, and who, in ceding this part of North America to the British Crown, in 1763, actually as a part of Canada ceded the Dalles. Reverting to the whole question, I contend that, whether the Act of 1791 is constructed according to strict, rigid, municipal rules, or contemplated



with a broad, liberal, and statesman-like spirit, the Dalles form a part of His Majesty's Province of Upper Canada, and if the offence has been committed at all, it has been committed out of the jurisdiction of this Court.

*Mr. Vallière de St. Réal.*—May it please the Court; I have the honor to submit that it appears to me that the Statute of the 14th of the King (upon which the Crown officers rely) must instantly strike the reader as being a temporary Act, and that it never was intended to be a permanent one. It is true that the boundaries were given by this Act to the old Province of Quebec, but these boundaries were only to remain during the King's pleasure, and his will is clearly made known by the Act of 1791. But the principal objection which my learned brethren, the counsel for the Crown, make to our construction of that Act is this, that in the preamble or title to it, the Province of Quebec is mentioned. But it was well remarked by my learned brother Stuart, that the preamble of an Act is nothing—that it is like the preface of a book, but that we must look at the enacting clauses to discover the spirit. We know that it is necessary in the preamble of one Act to recite the title of the old Act which is amended, and it is perhaps to that circumstance that may be ascribed the introduction of the words “the Province of Quebec” in the Act of 1791. But that does not signify; it is impossible to consider the proclamation of the King, or His Order in Council, otherwise than as giving to the Province of Upper Canada “all the country to the west of a line drawn due north, from the head of Lake Temiscaming to the boundary of Hudson's Bay, which was known as Canada.” Let us look at the boundaries and we shall see that the boundary line between the Provinces is this, namely, from “a stone boundary on the north bank of the Lake St. Francis, at the cove west of Pointe au Beaudet, in the limit between the Township of Lancaster and the Seigniorship of New Longueuil, running along the said limit in the direction of north thirty-four degrees west, to the westernmost angle of the said seigniorship of New Longueuil, thence along the north-western boundary of the Seigniorship of Vaudreuil, running north twenty-five degrees east, until it strikes the Ottawas River, to ascend the said river into the Lake Temiscaming, and from the head of the said lake by a line drawn due north until it strikes the boundary line of Hudson's Bay, including all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada.” I beg to remark that these limits are very well known, and also that they were well known before the proclamation. My learned brother, Stuart, has well explained the extent of these limits, and he has not taken too wide a purview of them. The words of the proclamation are very remarkable. After having described the lines which separated the Province of Upper Canada from the Province of Lower Canada, it adds, “including” (a very remarkable expression) “including all the territory to the west and south of the said line,” (the line drawn due north from the head of Lake Temiscaming until it strikes the boundary of Hudson's Bay,) “to the utmost extent of the country commonly called or known by the name of Canada.” Let us consider these words, “the utmost extent of the country commonly called or known by the name of Canada.” The words are not “of the country commonly called or known by the name of the Province of Quebec;” no, not at all; but they say: “by the name of Canada.” The question therefore is, what is the utmost extent of the country known as Canada? The Abbé Raynal, in his “History of the Indies,” speaking of this country, vol. 8, book 17, page 238, says: “the year 1764 beheld the rise of a new system. Canada was dismembered of the Coast of Labrador, which was added to Newfoundland; of Lake Champlain and the whole tract of land to the south of the 45° of latitude with which New York was augmented; of the immense territory to the westward of Fort Golette and of Lake Nipissim, which was left without a government; and the remainder, under the designation of the Province of Quebec, was placed under one governor.” The description which this respectable historian here gives of the territory thus dismembered gives a correct idea of the country known as Canada. This new system, he says, gave a part of Canada to Newfoundland. New York was increased by another part, namely, the tract to the southward of the 45° of latitude. “The immense territory to the west of Fort Golette and of Lake Nipissim

was left without any government," (and as my learned brother Stuart has well maintained, it is this immense territory which the proclamation of the year 1791 gave to Upper Canada, as being a part of the country called or known by the name of Canada) "whilst the remainder" (to wit, of the country known by the name of Canada) "was placed, under the designation of the Province of Quebec, under one governor." I have the honor to submit to your Honors, that looking at the words of the proclamation of 1791, and comparing them with this description of the Abbé Raynal, of the territory left without any government, we shall find it to be the country which, by this proclamation, it was proposed to make a part of Upper Canada, at the time when it was declared that the line should be "drawn from the head of the Lake Temiscaming due north until it strikes the boundary line of Hudson's Bay;" and moreover, "including all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada." This territory was then known by the name of Canada, and it is situated to the westward of that line, and therefore it proves to be a part of Upper Canada. Again, I beg the attention of the Court to the work of Mr. Pinkerton, a well-known English geographer. This distinguished author, speaking of the extent of Canada, gives very large bounds to it; vol. 3rd, page 234, he says: "This country" (Canada) "is computed to extend from the Gulf of St. Lawrence and Isle of Anticosti, in the east, to the Lake of Winnipeg in the west, or from longitude 64° to 97°, west from London 33°, which, in that latitude, may be about 1,200 geographical miles. The breadth from the Lake of Erie, in the south, or latitude 43°, may extend to latitude 49°, or 360 geographical miles, but the medial breadth is not above 209." So far he speaks of the absolute geographical extent of Canada; the subsequent observation which he makes relative to the original population of the country, strongly supports the argument which we have the honor to submit to the Court, viz:—that this country described by the Abbé Raynal as "l'immense territoire, qui fut laissé sans aucun gouvernement," is the very country intended by the proclamation of 1791 to receive a government and become a part of Upper Canada. "The original population" (says Mr. Pinkerton) "consisted of several savage tribes, whose names and manners may be traced in the early French accounts, which may also be consulted for the progressive discovery, the first settlement being in Quebec in 1608. During a century and a-half that the French possessed Canada, they made many discoveries towards the west, and Lahontan, in the end of the 17th century, has given a tolerable account of some lakes beyond that called Superior, and of the River Missouri. Quebec being conquered by Wolfe in 1759, Canada was ceded to Great Britain by the Treaty of Paris in 1763." I therefore confidently submit that this western territory which had been discovered by the French, and is described by Lahontan and other writers, under the name of Canada, became in reality a part of Upper Canada by the proclamation of 1791, and consequently does not form part of the Indian Territory, nor is it within the jurisdiction of this Court. The Abbé Raynal and Mr. Pinkerton agree in their description of the western boundary of Canada, and for the southern boundary of Canada let us again look at the Abbé Raynal's work. This writer, in the same volume of his "History of the Indies," treating of the extent, soil and climate of Louisiana, says (book xvi., page 111):—"Louisiana is a vast country, bounded on the south by the sea, on the east by Florida and Carolina, on the west by New Mexico, and on the north by Canada, and by unknown lands which may extend to Hudson's Bay. It is not possible to fix its length with precision, but its medium breadth is 200 leagues." Here we see that the northern limit of Louisiana is Canada and unknown lands, which may extend to Hudson's Bay. With the proclamation 1791 before our eyes, which tells us that the boundaries of Upper Canada include the whole of the country to the west and south known under the name of Canada to the utmost extent of that country, it is impossible to say, but that that country which bounds Louisiana to the northward, according to the Abbé Raynal, must at this moment form, in conformity with that proclamation, a part of Upper Canada. The country known as Canada extends to the south as far as Louisiana, and to the west as far as the 97° of longitude. There



remains now for us to consider the northern limits of Canada, and here we have not the same certainty. In the maps of New France, it is true that the whole of the River Winnipic is included in it, and the northern boundary line is drawn in conformity with the interpretation of the limits of Canada, which we have submitted to the Court. To prove that this interpretation is a correct one, and that it in effect agrees with the limits of Canada as they were known to the French Government, I will take the liberty of praying the attention of the Court to what we look upon as a very strong authority. It is an Act of the Duke of Ventadour, dated in 1625, and will be found in the "Edicts and Ordinances," vol. 2, page 11, under the title of "Commission of Commandant in New France, of the 15th February, 1625, by his Grace the Duke of Ventadour, who was Viceroy of the country, in favor of the Sieur de Champlain." This instrument begins by reciting other patents of commission obtained by him, and proceeds in the 12th page to declare, in the most precise manner, the view taken by the Government of France of the extent of this part of their possessions. This instrument will support the position that the territory which the French knew as being called by the name of Canada, to the south and west of the line so frequently mentioned in the course of my speech, proves to be ordered by the King's proclamation of 1791, to make, and that it will be found actually to make part of his Province of Upper Canada "as far as the utmost extent of that country." Let us look at this Act and we shall perceive from it that the most extended powers were given to the Sieur de Champlain, powers which it must also be maintained did not at the time awaken any doubts as to the right which France had to grant them, nor any impediment to their exercise, on the part of any other nation. This commission, in the first place, ordains and deposes "the Sieur de Champlain, our Lieutenant, to represent our person in the country of New France, and to that effect we have ordered him to go and reside with all his people at the place called Quebec, being within the River St. Lawrence, otherwise called the great river of Canada, in the said country of New France." Now we will look at the powers which were granted by this commission; "and in the said place, and in other places which the said Sieur de Champlain may think fit, to cause to be erected and built such forts and fortresses as may be wanted, and necessary to him for the preservation of his people, which fort or forts he shall keep for us in his power, in order, at the said place of Quebec, and other places and stations within the extent of our said power (vice-royalty), as much and as far as may be, to establish, extend and make known the name, power and authority of His Majesty, and in the premises to conquer, subject and bring to obedience all the people of the said country, and of the circumjacent countries, and by means thereof, and of other lawful means, to call them, cause them to be instructed, excited and moved towards the knowledge and service of God, and of the Catholic, Apostolic and Roman religion; to establish it there, and in the exercise and profession thereof to maintain, guard and keep the said places under the obedience and authority of His said Majesty; and in order to have regard thereunto, and more surely to fulfil the same, we have, in virtue of our said authority (vice-regal), permitted to the said Sieur de Champlain, to commission, appoint and substitute such captains and lieutenants for us as need may be, and in the like manner to commission officers for the distribution of justice, and the observance of the police regulations and ordinances, until by us otherwise may be provided; to treat for and contract, to the same effect, peace, alliances, confederations, good friendship, correspondence and communication with the said people and their princes or others having the command over them; to maintain, observe, and carefully keep the treaties and alliances which he may enter into with them, provided that they fulfil the same on their parts, and in default thereof, to make open war upon them to constrain them, and bring them to such terms as he shall deem requisite for the honor, the obedience, and the service of God, and the establishment, maintenance and preservation of the authority of His said Majesty amongst them; at least to reside amongst, haunt and frequent them, in all safety, freedom, frequentation and communication; to trade and traffic amicably and peaceably; for that purpose to cause to be made discoveries in the said countries, and specially from the said place of

Quebec, until as far he may be able to penetrate beyond the same, within the lands and rivers which discharge themselves into the River St. Lawrence, in order to endeavor to discover a convenient way to go through the said country unto the Kingdom of China and the East Indies." Here, may it please your Honors, behold powers the most extensive, granted by the Government of France for all the objects which might require attention, to make peace and war; to spread the name, power and authority of the King of France over a country the bounds of which were not exactly known to themselves; to establish religion; to commission and in the like manner establish military and civil officers; to treat for and contract peace, alliances and good friendship with other nations and their princes, and on their being in default thereof, to wage open war against them. In fine, powers are granted by this commission which would not have been granted unless by a government which, by the law of nations, was entitled to grant them. These powers extend over all the lands and rivers which discharge themselves into the River St. Lawrence; assuredly the River Winnipic does not discharge itself into that river, but by the old maps that river (Winnipic) is situated within the country known to the French as Canada. After this proof of what was at the time considered as the territories of France by herself, it is only necessary to enquire whether the possession hereof was actually held by that kingdom. The species of possession which the law of nations admits as a proof of actual sovereignty will equally appear to be maintained. We see that by this commission power is given to cause to be erected and build such forts and fortresses as may be wanting and necessary to him, the Sieur de Champlain; now forts and fortresses were erected, and to this day there are ruins of French forts remaining in that country which incontestibly prove actual possession. We therefore now take up this position: that, neither at the time of the actual possession of the country by the French, nor since its conquest by the English, have the boundaries of Canada been actually defined. In support of this position, which is especially true as regards the northern limits, I submit that Charlevoix, the Abbé Raynal, Mr. Pinkerton, and all authors agree in representing that the boundaries of Canada under the French *régime* were not positively fixed or known. As an authority for saying that they are not fixed even at the present time, I produce the Topography of Mr. Bouchette, the Surveyor-General of this Province, who has bestowed great attention to everything that is interesting on this subject. I flatter myself that his work must be esteemed very strong authority. Mr. Bouchette, speaking of Upper Canada, says, page 590 of his Topography, "on the west and north-west no limits have been assigned to it." I pray the particular attention of the Court to the expression "no limits have been assigned to it; therefore it may be supposed to extend over the vast regions that spread towards the Pacific and the Northern Oceans. The separation between it and the United States is so vague and ill-defined, and the prolific source of so many disagreements between the two powers, that it has long called for the revision which is now about to be performed in fulfilment of the fourth and fifth articles of the Treaty of Peace of 1815." Here we have the declaration of the Surveyor-General of this Province, that on the west and north-west no limits have been assigned to the country called Canada. Mr. Bouchette speaks of the proclamation of 1791, but this is his opinion. In case there are no precise limits fixed we must enquire how those who were contemporaries, and who had a knowledge of the country, how the geographers of those days understood the matter. Let us look at the maps and we shall find that the whole of the River Winnipic is delineated as belonging to Canada. When Mr. Bouchette, speaking of this country in his Topography, says that it has no limits assigned to it, and adds, "therefore it may be supposed to extend over the vast regions that spread towards the Pacific and the Northern Oceans," it is very certain, as it appears to me, that he alludes to the proclamation of 1791, which bestows the whole country, to its utmost extent, commonly called or known by the name of Canada, upon the Province of Upper Canada. The Indian Territories are to the north of a line drawn as above, because the whole of the country to the south and to the west is within Upper Canada. The only point to consider seems to me to be this: that the proclamation of 1791 did not give the



boundary of the Province of Quebec for the limits of the two provinces, but that, in the actual words of the proclamation the limits of Upper Canada extend on the one side "from the head of Lake Temiscaming by a line drawn due north until it strikes the boundary line of Hudson's Bay, including all the territory to the westward and southward of the said line, to the utmost extent of the country commonly called or known by the name of Canada."

By Fort Bourbon and Fort Dauphin, and by many other circumstances, it is also beyond a doubt that the country where the Dalles are situated was in possession of the French, and, as we say, and as I hope we have proved by the maps and by enlightened authors (with whom the Surveyor-General of this province agrees), the country to the southward and westward was called and known by the name of Canada. In conclusion, I say the French knew the country as Canada, and that nothing to the contrary can be brought forward; and, moreover, that if we do not produce positive evidence that the Dalles are within the limits of Upper Canada, we have proved that no fixed limits have been assigned to it, and, by the same authority (an authority well entitled to respect on account of the official situation held by the writer), that it is considered to extend over the vast regions to the west and north. It is for your Honors to decide whether the Dalles are within it or not.

Attorney-General—The point before the Court appears to me to be so clear that it is almost unnecessary to argue it. A great deal of learning has been produced, and much ingenuity exercised by my learned friends to prove the point with which they set out, viz., that if the offence alleged in the indictment to have been perpetrated, and that by the prisoner at the bar, has been committed at all, it must have been in the Province of Upper Canada, and consequently out of the jurisdiction of this Court. In support of this position a variety of arguments have been resorted to, and numerous authors have been referred to. Fortunately for us, standing in a Court of law, there is positive law upon the subject; there is, therefore, no occasion to have recourse to the Abbé Raynal, or to Charlevoix, or any other of the speculative writers (writers, at the same time, for whom I entertain great respect), to whom my learned friend who last addressed the Court has referred, as furnishing authorities upon the question. It is our advantage that, in this case, without referring to authors who, however respectable they may be, were exposed to the too common failing of endeavoring to secure the favor of their respective Governments. I do not intend to throw the slightest imputation on the veracity of the very eminent writers whose opinions and arguments have been with so much ability brought forward, but merely to state that reference to them is completely unnecessary, as we have positive Acts of the British Parliament to guide both the examination and decision of the question. But we do not differ at all with our learned friends as to the extent of territory formerly claimed by the French, and which, undoubtedly, came into the possession of the British Crown at the Treaty of Paris of 1763; but all we submit to the Court is, that the whole of the French possessions did not constitute Canada, but that the country known by the name of Canada was much more circumscribed in its extent than my learned friends have described (and, I doubt not, very accurately too), the old French possessions to have been. The argument of my learned friend who opened this question is, that in construing this and every other Act of Parliament, we should proceed in a liberal and statesmanlike manner to apply its provisions. If we trace the movements of the British Government, we shall see the impossibility of that construction which my learned friends contend for being admitted to be correct. In 1760 these colonies were conquered, and capitulated to the British forces. By the Treaty of Paris, 1763, the whole conquest was finally ceded to His Majesty. In 1763 a part of this conquest was, by proclamation, erected into a province, denominated the Province of Quebec. By the Act of 1774, the Province of Quebec was enlarged. By the Treaty of Peace with the United States of America, the situation and boundaries between the late colonies and the Province of Quebec and other of His Majesty's Dominions in North America were clearly defined, and in 1791 this series of legislative and diplomatic measures were completed by His Majesty dividing his then Province of Quebec into his two Provinces of Upper and Lower Canada. Let

for a moment look at what the Act of 1791 proposes to effect, and everything like difficulty disappears in a moment. It was to divide a large province, namely, that of Quebec, into two small ones, to be called Upper and Lower Canada; and, consequently, the boundaries of these two provinces could only be commensurate to that of Quebec, and Upper Canada must be a part of the former province and of that only; otherwise the Act, instead of being an Act to divide the Province of Quebec, ought to have been denominated an Act to enlarge its boundaries, and from its extended limits to form the two provinces therein created. The error of my learned friend is this: that because Canada happens to be mentioned, therefore the avowed object of the Act, viz: that of dividing the Province of Quebec, must be abandoned, and give place to what my learned friend calls the broad and enlightened policy of providing a government for the whole of His Majesty's dominion in North America. I again take up the Act, and looking at its title I find it to be an Act to repeal certain parts of an Act passed in the 14th year of His Majesty's reign, entitled an Act for making more effectual provision for the government of the Province of Quebec in North America. What the Province of Quebec comprehended is as well known as the limits of this room. The Act of the 14th of the King, commonly called the Quebec Act, defines them precisely, and how then did this Act of 1791 amend that of 1774? Why, His Majesty having been pleased to signify by message to both Houses of Parliament his royal intention to divide the Province of Quebec into two provinces, it was enacted by this Statute that it should be so divided, and that two provinces should be created. If my learned friend's observations are correct, then the 14th of the King amounts to nothing, because, though the Act of 1791 is professedly an Act to amend, not to repeal the Act of 1774, still it is indispensable to a correct interpretation of the Act to divide the Province of Quebec (according to my learned friend's doctrine) that you add a very considerable territory to it—a mode of division I confess I am not acquainted with. The Act being to divide the Province of Quebec, I contend that the limits of the two Provinces must be found in those which constitute the province out of which they were formed, and that whilst on the one hand they must be commensurate to those limits, so on the other hand they cannot exceed them; that more cannot be included in the two than in the one province; and, that being the case, the Province of Upper Canada can consist only of that part of the former Province of Quebec which does not form the Province of Lower Canada. This proposition I consider so clear—that a province, any more than anything else, cannot comprehend or contain more when divided into two Provinces than it did when a whole—that I should feel myself very unjustifiably taking up the time of the Court were I to pursue the argument further. If any other construction is to be given to the Act, then the 14th of the King, defining the Province of Quebec, amounts to nothing, and the Act of the 1st, instead of being an Act to divide, is in reality an Act to enlarge the Province of Quebec under the new title of Upper and Lower Canada.

Solicitor-General.—I consider the point so extremely plain, that it is not only passing, but almost trifling with, the time of the Court, seriously to argue whether the division of a Province into two parts can, by any possibility, be construed to mean the addition thereto of a vast and almost (according as my learned friends contend) immeasurable territory. In support of this apparently most novel and extraordinary proposition, my learned friend, Stuart, contends that the expression in the designation of the boundaries, “the country commonly called or known by the name of Canada,” is conclusive that it was in this manner that His Majesty intended to divide the Province of Quebec. The enquiry, and the only enquiry upon the subject, appears to me to be one extremely easy of decision. It is simply whether that one sentence is to preclude or set aside the whole of the first clause of the Act, in which the intention of His Majesty and of Parliament is so clearly expressed. The Act of 1791, after reciting the title of the 14th of the King, assigns the reason which induced the Legislature to pass the Act for the internal regulation of the two separate provinces, which His Majesty had signified his royal intention of forming by the division of his then Province of Quebec, namely, “that the said Act is, in many



respects, inapplicable to the present condition and circumstances of the said province and that it was expedient and necessary that further provision should now be made for the good government and prosperity thereof." It is not said that it is necessary or expedient to enlarge the said Province of Quebec, but that further provision should be made for the good government thereof; of it, as it thus stood: of that province which had, by proclamation, been created in 1763, and whose limits have been extended to what they then were by the Act of the 14th of the King, commonly called the Quebec Act. My learned friend must most surely be driven to the last state of despair when he sets up a loose expression in a declaratory Act which he well knows is the weakest of all Acts of the Crown, in affording a just ground of foundation for such an opinion. I know that it is not to the preamble of an Act of Parliament that we generally most look for a clear exposition of its objects; but, whilst I admit the correctness of that position, I would also remind my learned friend, that there is a wide difference between the enacting and declaratory clauses of a Statute, and that we ought not to set aside the obvious meaning, and overturn the avowed intention of an Act of Parliament because of a loose expression in the declaratory clause. I cannot think so meanly of the whole French nation as to suppose they ever claimed these territories and wildernesses, as belonging to or forming a part of Canada. As to the authorities my learned friend who spoke second has advanced, they cannot, in a court of law, be styled authorities. I have a very great respect for the Abbé Raynal, but his work is merely speculative and philosophical, and is no geographical authority upon a question of territory; the same remark will apply to Pinkerton,—we all esteem it as a very useful work, but it forms no geographical authority in a Court. Upon the whole, I contend, with the Attorney-General, that that the former Province of Quebec must be found in the Provinces of Upper and Lower Canada, and that no more can be included in them than what was contained in that province; for the Act by which they were erected into provinces was nothing more but an Act to divide it into two parts, thereafter to be designated Upper and Lower Canada. Again, the learned gentlemen say, that all to the south and west of this line, from Temiscaming Lake to Hudson's Bay, must be esteemed Canada; what then was the use of this Act of the forty-third of the King? The Legislature, if my learned friends' arguments were correct, were idly passing an Act that could have no object. Instead of Indian territories it is all Upper Canada, according to my learned friends' statement. But it is a position completely untenable for a moment. Upper Canada extends no farther south and west than the Province of Quebec did, any more than does Lower Canada to the north and east. In the two Provinces are now to be found that which before the separation constituted the Province of Quebec, and Upper Canada consists of that part, and of that part thereof only, which is south and west of the Province of Lower Canada. I refrain from enlarging, confident that, in the view we take of the subject, we are correctly construing the intention of the Legislature, and that we shall have our own opinion strengthened and confirmed by your Honors' decision.

Mr. Stuart.—I confess I look in vain for those grounds of confidence on which my learned friends rely. If supporting their opinions by confident assertions entitle them to expect the result they anticipate, they have certainly gone a good way towards obtaining it; but I look in vain for anything that can be called argument upon the question that is now before the Court, in the observations that have been submitted by the officers of the Crown. If there was anything that demanded attention, it was the remark of my learned friend the Solicitor-General, on the Act of the 43rd of the King; but in that the learned gentleman has made a mistake; for if my learned friend referred to the chart, he would perceive that nine-tenths of the whole Indian Territories, according to the description of them, lie beyond the boundary which we claim as that given to Upper Canada by the Act of 1791. If my learned friend traced the parallel of 52° he would perceive that nearly the whole of the North-West Company's stations, and the whole of those of the Hudson's Bay Company, are to the north of that line. Then surely it is obvious that this was not an Act without an object. It was an Act to extend the jurisdiction of the Provincial

courts to the trial and punishment of offences committed in the Indian Territories, and they are to be found in the immense and almost boundless wilderness to the north and west of the Province of Upper Canada, as established by the Act of 1791. The Act of the 14th of the King was obviously temporary; the proclamation of 1791, defining the boundaries of the two provinces—and which, I must confess, I was extremely surprised to hear so lightly spoken of by the Crown officers—was founded upon an Act of a very different description. The former was merely a temporary, whilst this was a permanent Act.

Mr. Justice Bowen.—From what part of the Act of 1774 do you conclude that it is only a temporary Act? I see no part in it that warrants such a conclusion, except with reference to the last clause.

Mr. Stuart.—The words there made use of are general, and, as I conceive, must be understood to refer to the whole of the Act. I mean, however, independently, to contend that the time at which that Act was passed, and the situation of England with reference to her American Colonies, concur to show that this Act was merely temporary. But it is needless to refer to the Act of 1774, as it does not bear upon the case, being completely done away by the broad and liberal proclamation of 1791. That proclamation created two provinces. I am surprised that the Crown officers should treat so lightly His Majesty's proclamation; it is certainly not the quarter from which we should expect it. How was the Province of Quebec created? By proclamation—and surely my learned friends will allow as much weight to one of His Majesty's proclamations as to another. They will not deny the same power to His Majesty in 1791 which he exercised in 1765 [1763?]. If proclamations are such weak acts, what are we to think of the proclamation that has been put in evidence on the present trial and has been resorted to upon all occasions as the justification for all the apparent aggressions which have marked the progress of these unfortunate disputes? But I differ in opinion with my learned friends on that point; if, in 1763 His Majesty could create a province by proclamation, he, in 1791, could divide and enlarge a Province in the same way. This he has been pleased to do, and all we have to do with this expression of the royal will and pleasure is to adopt it as the rule by which we are to be governed in considering and deciding the question of jurisdiction now before the Court; and we contend that, looking at this proclamation, it is impossible to say that this offence, if committed at all, was committed within the jurisdiction of this Court, being perpetrated at the Dalles, which form a part of His Majesty's Province of Upper Canada, as created by His Royal Proclamation of 1791.

FRIDAY, 29TH MAY, 1818.

Chief Justice Sewell.—The Court are most distinctly of opinion, on referring to the Act of 1791 and that of 1774, that the argument on the defence must fail. What was the object of each Act? Amongst others, that of 1774 was to enlarge the Province of Quebec, which had been created in 1763. That of 1791 was to separate and divide the Province of Quebec into two provinces, to be denominated Upper and Lower Canada, and make each respectively independent of the other by giving a Legislature to each respectively, but still retaining between or within the two provinces, the same extent of country, the same space as the one province contained. What is the Act? What is its object, its avowed object? To repeal certain parts of the Act of 1774; and what is the part repealed? It is that part of it which gives authority to the Council of the Province of Quebec; and what is the reason assigned for so doing? Why, that His Majesty had signified it to be his royal will and pleasure to divide his Province of Quebec. To assert that he intended by this that the limits of the Province should be extended by the separation appears to be repugnant to the plainest principles of common sense, and therefore I cannot assent to it. The short story of the Act of 1791 is briefly this: The King signifies to Parliament his royal intention of dividing his Province of Quebec, and he calls on the Legislature to provide for this alteration by granting an Act adapted to the change. The Legislature passes an Act providing for the due government of the two provinces, and under the authority of this Act, and the Royal Proclamation, the Province of Quebec was



accordingly divided, the Royal Proclamation being an exercise of sovereign authority His Majesty in that Act, by and with the consent of his Privy Council, declared what should be the line of separation between Upper and Lower Canada, and how much of the former Province of Quebec shall belong to the one, and how much to the other. The object of the Act and the object of the Royal Proclamation are so clearly expressed that we cannot for a moment doubt upon the subject. What says the Act "His Majesty having been pleased to signify his royal will and pleasure to separate and divide the Province of Quebec." What says the proclamation? Why, the very same words. To divide the Province of Quebec, not to add to it, any more than to take away from it. Therefore, Upper Canada, in the purview, could include only that part of the province so divided as was not contained in Lower Canada; but it could not extend beyond those limits which constituted the Province of Quebec, otherwise it would certainly have been an Act to enlarge, rather than an Act to divide. In delivering this opinion I am speaking our unanimous sentiment, for we have consulted our brother Perrault upon the subject and he clearly concurs with us. According to our understanding of the Act and Royal Proclamation, we are bound to say that we consider the argument of the gentlemen concerned for the prisoner, though presented with great ability and ingenuity, must fail, because the western boundary of the Province of Upper Canada is "a line drawn due north from the confluence of the Ohio and Mississippi Rivers till it strikes the boundary territory line of Hudson's Bay."

The question of *fact* will remain with the Jury. It is *they* who are to say whether this place, *the Dalles*, IS OR IS NOT to the *west* of the line which *we* now declare to be the *western boundary of His Majesty's Province of Upper Canada*. If they are of opinion that it is within, or to the *east* of this western line, then it is in the Province of *Upper Canada* and not within *our* jurisdiction; but, if they are of opinion that it is to the *west* of this line, then, I am giving you our *unanimous* opinion, when I declare that *the Dalles are in the Indian Territory, and not within the limits of the Province of Upper or Lower Canada*, but clearly within the jurisdiction of this Court, by the Act of the 43rd of the King, chapter 133, which extends our power to "the trial and punishment of persons guilty of offences within certain parts of North America."

## 2.—TROUBLES IN THE NORTH-WEST.

CASE OF JOHN MOWAT, 1809.

In the autumn of 1809, Mr. William Corrigan acted as a trader in the service of the Hudson's Bay Company, at a post which he occupied near Eagle Lake, to the north of Lake Superior. On the 15th September, a party of the North-West Company established an encampment about forty yards from his house, under the command of one Aeneas MacDonell, a clerk of the latter company. The same evening an Indian arrived in his canoe to trade with Corrigan, and to pay a debt which he owed him. He was not able, however, to defray the whole amount, and Corrigan told him he would take the canoe in part payment. This the Indian consented to, but requested that it might be lent him for a few days, when he would return with it. This was agreed to, and the canoe was brought up to Corrigan's house, where the Indian remained all night. Next morning he received some more articles in advance, such as clothing for his family, ammunition for his winter hunt, &c.; and when he was going away, three of Corrigan's men were sent down to the wharf with the canoe and the goods. This being observed from the North-West Company's encampment, MacDonell immediately went down to the Lake, armed with a sword, and accompanied by a Canadian named Adhemar, armed with a brace of pistols. Upon pretence that the Indian was indebted to the North-West Company, they proceeded to seize and drag away the canoe with the goods to their own wharf, when Mr. Corrigan observing them, ordered two of his men, James Tate and John Corrigan, to go

into the water and secure the canoe and the property. They proceeded to obey his orders, when MacDonell drew his sword and struck two blows at Tute's head. The latter was unarmed, and, in order to guard his head, raised his arm which was in consequence severely cut across the wrist. He then received another deep wound in his neck, immediately below the ear, which felled him to the ground. Adhemar at this time had seized John Corrigan (who was also unarmed), and presenting a cocked pistol to him, swore that if he went near the canoe he would blow his brains out. Several of the Hudson's Bay Company's servants who were near the spot, observing what was going on, and perceiving that the rest of MacDonell's men were collecting with arms, ran up to their own house, which was only about forty or fifty yards from the Lake, to get weapons for the defence of themselves and their fellow servants. MacDonell next attacked John Corrigan, who, to escape from him, ran into the lake; but finding the water too deep, he was soon obliged to make a turn towards the shore, when his pursuer made a blow at him with his sword, cut his arm above the elbow, and laid the bone bare. He followed this up with a tremendous blow at his head, which Robert Leask, one of Corrigan's men, fortunately warding off with the paddle of the canoe, which was cut in two by the blow, as stated upon oath by Leask in his affidavit. MacDonell then attacked another servant named Essen, making a blow at him with his sword, which, however, only struck his hat off; but in making his escape, Essen fell in the water, and before he could recover himself, another Canadian of the name of Joseph Parisien, aimed a blow at his head with a heavy axe, which missed his head, but dislocated his shoulder, so that he could make no use of his arm for two months afterwards. MacDonell and Adhemar, the one with his drawn sword, the other with his pistol, continued to pursue several other of Corrigan's servants towards their house, when one of them, named John Mowat, whom MacDonell had previously struck with his sword, and was preparing to strike again, shot MacDonell on the spot.

Mr. Corrigan immediately got his party up to the house, had every care taken of those who were wounded, and consulted with his men about the best mode of securing themselves against further attack. In a few hours Adhemar the Canadian, sent off a light canoe to Lake Sal, where Mr. Haldane, of the North-West Company (under whom MacDonell had been placed), was stationed. Another canoe was also dispatched to Lac La Pluie, to a Mr. McLellan, under whom Adhemar himself had acted.

On the 24th Haldane arrived in a canoe with ten men, and on the following day McLellan also made his appearance with about the same number, all armed. They shortly afterwards came to the gates of the stockades, with which Corrigan and his party had barricaded themselves, and demanded the person who had shot MacDonell. Corrigan told them that he had not seen MacDonell shot, and could not say who the person was that killed him. They answered him by declaring that if the person was not immediately given up, they would either shoot every one of them or get the Indians to kill them, were it even to cost them a keg of brandy for each of their heads. In order to prevent bloodshed, Corrigan then told them that three of them might enter within the stockades and fix upon the person if they could, and that he would call out all his men for that purpose. This was accordingly done, and they fixed upon Edward Mowat. Corrigan told them it could not be him, as he was in the house at the time MacDonell was shot. John Mowat then stepped forward, saying he was the man, and that he would do so again in his own defence. He then voluntarily agreed to surrender himself, and it was settled that two of Corrigan's men should be taken down with him to Montreal, as witnesses in his behalf. James Tate and Robert Leask volunteered for that purpose, and it was stipulated that if Mowat was taken down straight to Montreal, the two witnesses could be carried along with him, but if he was detained till the spring, one of them could be sent back to Eagle Lake, and that Mr. Corrigan himself should go to Montreal as a witness in his room.

These precautionary measures having been thus taken, Mowat and his two witnesses proceeded to the North-West Company's encampment, where the former



was put in irons. Next day, Adhemar, with six men, together with the prisoner and his witnesses, set off for Lac La Pluie, where they arrived on the 2nd of October. From that day till the 19th, Mowat was kept in irons from six in the morning till eight in the evening. On the 19th they were taken off, but were replaced on the 26th, and although he had neither the means nor the inclination to make his escape, they were kept on during the night. This treatment continued till the 14th of December. During the whole winter he was kept in close confinement, and his witnesses themselves were subjected to much insult and indignity, and were obliged to submit to every species of drudgery and labor, in order to obtain a bare subsistence.

On the 26th of February, 1810, Leask was sent back to Eagle Lake from Lac La Pluie, as had been agreed upon. On the 25th May, Mr. Corrigan arrived at the latter place from Eagle Lake; on the 29th, Mowat and Tate were sent off with Adhemar for the North-West Company's rendezvous at Fort William, on Lake Superior, and two days afterwards Corrigan was despatched for the same place. They all arrived there on the 9th June, when Mowat was immediately imprisoned in a close and miserable dungeon, about six or eight feet square, without any window or light of any description whatever.

On the 21st June, Mr. Angus Shaw, a partner of the North-West Company, and a magistrate for the Indian Territory (under the Act of 1803) arrived at Fort William from Montreal. Next day Mowat was ordered to be brought before him, guarded by three men with muskets and fixed bayonets. The prisoner became a little restive at this summons, and refused to go, saying that he did not want to be taken before any magistrate till he arrived at Montreal. He was, however, dragged out of his dungeon and brought before the magistrate, who, being unable to extract anything from his mute and stubborn prisoner, ordered him to be taken back to his prison and put in irons.

From the 22nd June to the 10th July, canoes went off almost daily to Montreal. The witnesses repeatedly requested that they should be sent down there, but in vain. During that period they were not allowed to hold any communication with the prisoner, being only permitted to look into his cell at the time his allowance of victuals was handed to him. On the 10th Tate got an opportunity of speaking to him. Upon enquiring how he was treated, Mowat said he was well off for food, but that he was kept in handcuffs from seven o'clock every evening till nine in the morning. After this the prisoner fell sick, and when Corrigan and Tate were informed of it, they went to see him, but were refused admittance. He grew worse on the 16th, and sent for Tate, who found him in a most lamentable state, his arms cut with fetters and his body covered with boils. He had asked for medicine, but got none, though there was a doctor in the place. From this time Tate continued to visit the prisoner as often as he could, dressed his sores, washed his linen, etc., etc., and on one occasion procured for him some medicine. On the 26th, McLellan and the person who had the custody of Mowat, told Tate that the prisoner wished to see him. They all went together, when Mowat advised Tate to try and make his escape with Corrigan, for, as to himself, he believed they meant to keep him there and murder him. McLellan assured him that that was not the case; that there was a magistrate on the spot, and that justice would be done him. The prisoner remonstrated on their keeping him there in irons, and not sending him down at once to a place where he could be tried. On the 5th August they brought Mowat's knife and razors to Tate, saying they could not trust him with them any longer, as they thought he was growing deranged. Tate, however, continued occasionally to visit and assist him till the 17th August, when he was brought out of his dungeon to be sent off to Montreal. In taking him out he fell down on the ground from weakness, and when they were assisting him into the canoe he again fell headlong into the bottom of it among the luggage, and cut his face with his handcuffs. This was the twentieth canoe belonging to the North-West Company which had left Fort William for Montreal during their stay at that place.

On the 20th of August, Corrigan and Tate were also sent off from Fort William in different conveyances, and on the 18th September, Tate arrived at Montreal.

Corrigal and Tate (the former of whom had been four months, and the latter a year, in the detention of the North-West Company), remained in prison in Montreal about six months, and during most of that time, they, as well as Mowat, experienced great distress and want. During part of that period, however, they excited the commiseration and received the charitable aid of some benevolent individuals of that place.

Mowat and his witnesses were indicted for murder. The Grand Jury found a true bill against Mowat, but none against the others. These were, in consequence, discharged, and were thereby rendered competent witnesses at Mowat's trial, which fortunately had not taken place before their liberation.

After a consultation of fifteen or sixteen hours, the jury brought in a verdict of *manslaughter*. Mowat was sentenced to be imprisoned six months and branded on the hand with a hot iron.

### 3.—REPORT OF T. K. RAMSAY, Esq., Q.C., ON THE NORTHERN AND WESTERN LIMITS OF ONTARIO.

MONTREAL, 18th March, 1873.

SIR,—I beg leave to enclose my Report on the question submitted to me as to the Northern and Western Limits of the Province of Ontario.

I have condensed the Report as much as possible; but as my statements may not appear altogether satisfactory, not being always based on precise authority, I have added notes containing proofs and illustrations in support of the conclusions at which I have arrived. Some of these may, perhaps, go into greater detail than is absolutely required, but in my investigations of the confused and often contradictory narratives of the early voyages to, and settlements in Hudson's Bay, I was obliged to examine all these details, and having done so, it was scarcely more difficult to reduce the whole result of my researches to writing than to separate the more from the less essential parts.

In the form in which these notes are presented, it is hoped they may interest, even where they do not instruct, those who may hereafter require to make use of the accompanying work.

I have the honor to be, Sir, your obedient servant,

T. K. RAMSAY.

to the Honorable A. CAMPBELL, P.M.G., P.C.,  
&c., &c., &c., Ottawa.

### REPORT.

A difficulty having arisen as to what are the true Northern and Western boundaries of the Province of Ontario, and the question having been referred to me for opinion, I beg leave to report the result of my investigations.

1. The limits of the Province of Ontario are defined in *The British North American Act, 1867*, as being such part of the Province of Canada, at the passing of the said Act, as formerly formed the Province of Upper Canada. We have, therefore, to enquire what were the limits of Upper Canada prior to the Legislative Union of Upper and Lower Canada in 1840.

2. The position taken by the Government of Canada is, that the Northern and Eastern boundaries of the Province of Ontario are identical with so much of those laid down in the Quebec Act (14 Geo. III., cap. 83), as being the limits of the old Province of Quebec, as would not include the former Province of Lower Canada. That is to say, the western boundary of Ontario is the meridian passing through the



point of junction of the Ohio and Mississippi rivers (now ascertained to be  $89^{\circ} 9' 27''$  16 west) north of the United States and south of the Hudson's Bay territories; and its northern boundary is the southern boundary of the territory granted to "The Merchant Adventurers of England trading to Hudson Bay," west of the line of division between the former Provinces of Upper and Lower Canada. It is further contended that the southern boundary of the Hudson's Bay territory is the height of land dividing the waters which flow into Hudson's Bay from those emptying into the valley of the St. Lawrence and the great lakes.

3. The Government of Ontario claims that the boundary is "very different" from the one set forth by the Government of Canada; and that the western boundary is at least to be determined (north of the United States and south of Hudson's Bay territory), by a line drawn north from the source of the Mississippi, and that the northern boundary of Ontario is the southern boundaries of the Hudson's Bay territories, west of the line of division between the former Provinces of Upper and Lower Canada. While agreeing with the Government of Canada, in general terms, that the southern boundary of the Hudson's Bay territories is the northern boundary of Ontario, the Government of that Province does not, however, admit that the height of land dividing the waters falling into Hudson's Bay, from the waters falling into the St. Lawrence and the great lakes is that boundary. On the contrary, they claim that the boundary is to the north of the watershed, according to the contentions of all former Governments, and by the indisputable facts that the northern boundary lies north of the watershed of the St. Lawrence system.

The Provincial Government further contends that there are grounds for maintaining the contention of former Governments of Canada, that the western boundary is further west than the line drawn due north from the source of the Mississippi (1).

4. It is important, before proceeding further, to clear the way, as far as possible the vagueness created by the reference to the pretensions of former Governments of Canada. For this purpose, it is necessary to examine what they contended, in order to know what the Government of Ontario now claims. Except for the purpose of limiting the indefinite description of the pretensions of the Ontario Government, the enquiry as to the contentions of former Governments of Canada, prior to Confederation, will be barren of results. Former contentions cannot bind in any way the Dominion Government, and this appears from every consideration. (a) Former Governments were not urging precisely the same question. Incidentally they may have represented a right to a greater extent of territory than that which they possessed; but the actual question formerly was the resistance of the claims of the Hudson's Bay Company, to the renewal of a lease held by them of the Indian territories (2). The real question now is, as to what was understood to be the Hudson Bay Company's southern boundary, by the authority which fixed that of Upper Canada. (b) The Dominion Government is not liable for the opinions of former Governments; but only for their debts and liabilities. (c) The pretensions of the Government of the Province of Canada were not admitted. On the contrary, the title of the Hudson's Bay Company was maintained; and the Dominion Government actually paid a large sum of money for the expropriation of the Company, besides leaving them a considerable estate. (3)

5. The most extreme pretension of the former Government of a portion of the now Dominion of Canada, so far as I can learn, is that put forth by the Commissioners of Crown Lands, in 1857, in a report which was not considered conclusive, in spite of its unquestionable ability. It was there incidentally contended that to the north Canada was either bounded by a few isolated posts on the shore of Hudson's Bay,

(1) Correspondence between the Dominion Government and the Government of the Province of Ontario.

(2) M. Cauchon's Report in 1857.

(3) In a Treaty between the Government of the late Province of Canada and the Indians "the height of land" is described as that which separates the territory covered by the Charter of the Honorable the Hudson's Bay Company from the tract over which the Government was to acquire the rights of the Indians.

that it had no particular limit in that direction, that to the west Canada includes the country about Red River and Lake Winnipeg.

6. The line of argument usually adopted turns on priority of discovery. So long as the contest was carried on between two independent nations, the title derived from conquest or discovery, however unsatisfactory, was the only possible subject of discussion. But when the whole title centres in one suprême power, the question becomes simplified, and the facts to be considered acquire a more conclusive character. It is the neglect to observe this distinction which gives the difficult aspect to the question before us. The attempt has been to submit to legal appreciation, pretensions which, after years of fruitless diplomacy, were only disposed of by force (*note A*). Were the question a new one, I should not stop, even for an instant, to enquire who first discovered and took possession of the lands round Hudson's Bay, or how far the French pushed their discoveries in the west; but from the point given to the discussion, I cannot wholly ignore the line of argument involving these matters, although the conclusions at which I arrive will not be materially influenced by it.

7. The historical argument of those who seek to give the greatest extension to the limits of the former Provinces of Upper and Lower Canada seems to be, that these Provinces were co-extensive with *La Nouvelle France*. They say that the Hudson's Bay charter was, if not wholly bad, at all events limited by its terms, which only grant those territories not already actually possessed by the subjects of any other Christian Prince or State (*note B*) that by the right of discovery, and as part of *La Nouvelle France*, all the country up to the Arctic Circle belonged to France, and that in the west, Canada extended to the furthestmost post ever held by the French, which would include Red River\*.

8. It will at once strike those who examine this pretension, that it is one thing to say that Canada extended to the Arctic Ocean, and quite another to say that the territories around Hudson's Bay were first discovered by the French, independently of any connection with *La Nouvelle France* or Canada. Of course if the discovery of *La Nouvelle France* gave the King of France a right to the whole continent north of the St. Lawrence, it is idle to waste time discussing the question of particular discoveries on the side of Hudson's Bay. But this pretension is utterly untenable and an after thought. The Commission to De Lauzon as Governor, 20th March, 1651, gives him authority—"dans toute l'étendue du dit fleuve St. Laurent en la Nouvelle France, Isles et Terres adjacentes de part et d'autre du dit fleuve et autres Rivières qui se dechargent en icelui jusqu' à Son Embouchure à prendre dix lieues près de Miscou du côté du sud et du côté du Nord autant que s'étendent les terres du dit pays—De la meme sorte et toute ainsi que l'avoit, tenoit et exerçoit le Sr. d'Ailleboud." A similar commission was also given to de Mezy in 1663. It is therefore plain that at that time the King of France did not think that *La Nouvelle France* extended beyond the water-shed of the St. Lawrence, (*note C*). It would not be difficult to make numerous extracts from ancient grants in unsettled countries to show that the grant of lands adjacent to a river was understood to be those drained by such river. A few instances will suffice. In a letter in the Paris M.S. Vol. 8, p. 990 mentioning the extent of the Post of Temiskamingue, we find "Ce n'est point l'intention de Sa Majesté d'affirmer sous le nom de Temiskamingue plus de deux cent lieues des pays qui faisoient ci-devant la majeure partie du commerce de Montreal, puisque cela tend à la ruine de cette ville. Son intention était d'affirmer le seul poste de Temiskamingue dans ces limites qui naturellement doivent consister dans les terres arrosées de la rivière de ce nom et des autres qui se dechargent dans la dite rivière; sans que l'on puisse y comprendre les terres qui sont au dessus ni au dessous de la dite rivière." The grant to the Hudson's Bay Company was of the lands and territories on the confines of certain Bays, Lakes, Rivers, Creeks and Sounds. So completely was it understood that the watershed is the limit of a grant described by

\* Mgr. to M. de Chesneau, 15th May, 1678. Memoir 8 Nov., 1686. Doc. Hist. 9, Père Marest Lettres d. Nelle Ed. Vol. VI, p. 4.



rivers, lakes, or bays, that even the use of the word "highlands" in such a grant or in a treaty will be controlled so as to mean such an elevation as divides the flow of the waters. In the decision of the King of the Netherlands upon the disputed points of Boundary under the Fifth Article of the Treaty of Ghent, between Great Britain and the United States of America, H.M. said: "Selon les exemples allégués le terme Highlands s'applique non seulement à un pays montueux ou élevé, mais encore à un terrain qui sans être montueux, sépare des eaux coulant dans une direction différente, et qu'ainsi le caractère plus ou moins montueux et élevé du pays a travers lesquelles sont tirées les deux lignes respectivement réclamées, au nord et au midi de la Rivière St. John, ne saurait faire la base d'une option entr'elles." In M. Bobé's (? Bolé) memoir (1) respecting the boundaries, prepared in 1723, the name of "La Nouvelle France" is given to that vast tract of country extending from the 30 to the 52 degree of N. Lat. And in 1755 Bellin, who was "Ingénieur de la marine" et du dépôt des Cartes Plans et Journaux et Censeur Royal, says "La baie d'Hudson et les Pays voisins sont une grande étendue de côtés entre le 67 et le 51 degré de Latitude Septentrionale." (note D.)

9. The question of priority of discovery of the Hudson's Bay, and of the territories on the confines of the rivers and bays connected with Hudson's Bay, does not appear to be in favor of French pretensions. If discovery alone is to convey a title to either nation, the French pretensions must fail.

10. It is not denied (note E) that Hudson discovered the bay which bears his name, (2) and that he wintered there in 1610-11. In the following year, Button, following in the path already traced by Hudson, discovered Nelson river, which he named after his pilot, who died during the expedition, and he passed the winter of 1612-13 in the bay. It would seem the failure of these discoverers, in their main object, to find a north-west passage, discouraged further enterprise in this direction, and (3) "the business slept from 1616 to 1631," while their attention was turned towards the South. In 1631 Luke Fox went and wintered at Nelson river. James wintered in the Bay in 1631-32 (note F.) In 1667 or 1668, Gillam, with DesGrozelières and Radisson, (note G) went to Hudson's Bay and established himself at Rupert's river. On his return to England a Company was formed which, under the name of "The Governor and Company of Adventurers of England trading into Hudson's Bay," obtained from Charles II. the famous Charter bearing date the 2nd May, 1670.

In the same year the Company sent out an expedition to make a permanent establishment, with Mr. Bailey as Governor, and Fort Nelson was founded as the principal post.

11. The French meet this, without denying the early discoveries of Hudson, Button, Fox and James, by saying (4) that possession of unknown countries must be taken by some formal act, such as planting the arms of the King who claims a title to it; that those travellers have left no account of their discoveries, and consequently it is not established that they ever took possession of the countries, they are said to have visited, in the name of their Sovereign. They further pretend that in 1656 Jean Bourdon sailed from Quebec and took possession of the Baie du Nord and that this is proved by the register of the Council of New France of the 26th August, 1656. That in 1661 the Indians of the North Bay came expressly to confirm the good understanding between them and the French and asking for a Missionary, and that Father Dablon went there in the same year. That there were expeditions of Couture and Duquet in 1663; and that the expedition of Gillam was led there by rebellious subjects, who could convey no title, and that the very fact of Des Grozelières and Radisson being able to lead the English

(1). Doc. Hist. 9., p. 913.

(2). Map in Gottfriedt 1655. Charlevoix 1, p. 476, Garneau 1, p. 139.

(3). Ogilby's America, published 1671. French and English discoveries in America, Doc. Hist. 9, p. 1. Supposed to be written by Champlain, Am. Ed. note.

(4). See Memoir of M. de Caillières to M. de Seignelay, 25th February, 1685, P.M. S. III, p. 1, and memoir of 8th Nov. 1686. Is it by de Denonville? See note signed Louis and Lower down Colbert, Doc. Hist. 9, 303.

Captain Gillam there, shows that they had themselves been there before, and consequently had acquired the territory for the King. The French then proceed to relate the voyage of de Lauson to Sault Ste. Marie in 1671, and his formal taking possession in the name of the King of France with the consent of seventeen nations, among whom were the Indians from Hudson's Bay. They also insist on the voyage of P. Albel and St. Cimon in 1671-72.

12. This is an unfortunate answer. It either goes too far or not far enough. To get over Hudson's and Button's discoveries, it cuts off the expeditions of Couture and Duquet, of which there are no formal records. The same may be said of the overland expedition of Des Grozeliers and Radisson. Prior to the voyage of Gillam with them, there is no record whatever of Des Grozeliers and Radisson ever having been at Hudson's Bay, nor is it even now said in what year they were there. It is a mere rumor, in no way proved by their conducting Gillam to Hudson's Bay. The experience derived from an overland journey, even if it had taken place, could not have aided them in a voyage by sea. Again, if anything were to be drawn from the quality of these two adventurers as Frenchmen, by parity of reasoning, we should have to deprive Spain of the results of Columbus' discoveries. The presence of a foreigner, even were he the leader of the expedition, would not alter its national character. However, no mystery attends the history of Jean Bourdon's voyage in 1656 (*note H*) or that of Père Dablon in 1661 (*note I*). The evidence is complete that neither ever reached Hudson's Bay. Albel's (*note J*) journey, again, is too late to affect the question, and trading with the Indians (*note K*) from other countries in Canada cannot give a title to their country.

13. The answer of the French to the early discoveries of Hudson, Button, (*note L*) Fox, and James, is unfounded. In the work attributed to Champlain, already noted, (1) the map published by "the English Captain" of his discoveries in 1612 referred to in 1632. Purchas also saw this map, and Jeremie (2) speaks of the taking possession of Bourbon river by Nelson and says that he planted a post on which he exposed the arms of England, and a great board on which a ship was drawn. He also left some trifling articles of which the Indians profited in the spring. Jeremie says, also, that the English returned the following year; but it is more probable that they wintered at the Bay, for there it is said Nelson died, and Button gave his name to the river they discovered. Again, Fox, when he went there in 1631, saw "quelques petits monumens du sejour que Thomas Button (y) avait autrefois." (3) In 1635 Luke Fox published "The North-West," with a map; and in 1633 James had already published his adventures with a map. James' work was re-published in 1640.

14. We have, therefore two English voyages of discovery (those of Hudson and Button) well authenticated, more than forty years before the voyage of Bourdon, of which there is no authentic mention till 1686, and then the account is evidently incorrect and written with a purpose. Fox and James' voyages to Hudson's Bay are both in 1661, the year of the pretended journey of Dablon, and two years previous to the totally authenticated journeys of Couture and Duquet. Again, the English Company was established and had built forts in 1670, whereas the Canadian Company did not begin its operations till 1682, and was not chartered till 1685. Whether then we consider priority of discovery, or discovery backed by actual acts of possession, the English claim to the country round Hudson's seems to be superior to that of the French, (*note M*)

15. But it is still more worthy of note that the activity displayed by the French in the direction of Hudson's Bay dates from the time they heard that ships had been in the neighborhood of the Bay, (*note N*.) They learned this from some Jonquins, (4) and they immediately became alarmed. The next year, 1671, Father

(1) P. 8, note (3).

(2) *Recueil de Voyages du Nord*, p. 320.

(3) *Discours prel, au Voyages du Nord*, Vol. 1, p. xxxv.

(4) Talon to Colbert 10 Nov. 1670, *Doc. Hist.* 9, p. 67.



Albanel was despatched with St. Cimon to take possession of the country anew. (1) It was only, however, in 1685 that the Canadian Company de la Baie du Nord was formed, (2) and the following year the Governor of Canada sent de Troyes and d'Iberville to attack the English posts in Hudson's Bay. (3) These attempts to recover lost time were such flagrant violations of international law, that the Governor was obliged to disavow the object he really had in view, and to pretext the desire to capture Radisson. (4) The excuse was a bad one, even if it had been true, and it would have been more to the purpose if he had said that the Treaty of Neutrality was not signed till the 16th November, 1686, and that his commission to de Troyes was dated the 12th February, 1686.

16. The effect of the Treaty of Neutrality (*note O*) was not, however, much felt in these out-of-the-way places, and the war between the English and French companies progressed while the Commissaries hunted up titles and exchanged statements of pretensions. Reciprocal complaints having been made, the French and English Commissaries met in London, but not being able to agree as to the facts, they adjourned until the first of January, 1689. (5) In the meantime the revolution took place, and William, profiting by the invasion of the Caribbee Islands of the State of New York, and of the Territories of Hudson's Bay, declared war on the 8th May, 1689. On the 7th June, the King of France, presuming that owing to "the present troublesome conjuncture" in England, the English would not have adopted "great precautions in those parts" (Hudson's Bay), desired de Frontenac to afford the Canadian Company the protection it might need "as well for the expulsion of the English from the posts they occupy at Hudson's Bay as for the continuation of trade." (6) On the 25th June the French declared war. (7)

17. Hostilities which had been carried on at Hudson's Bay in spite of the Treaty of Neutrality, sanctioned by the Declaration of War, continued with all the force the rival Companies could command. The dashing courage of d'Iberville turned the scale in favor of the French, and the English Companies loudly complained of their losses (*note P*). In Europe William's appeal to arms had not produced all the results he desired, and the Treaty of Ryswick (8), by which his title to the English throne was acknowledged, was concluded with a total disregard of the rights and interests of "The Merchants Adventurers of England trading into Hudson's Bay." Most dolefully did they complain that in the general rejoicings at peace, they alone were left to grieve (9). Nevertheless, it would seem that their sufferings were not altogether insupportable, for the Commissaries named never reported (*note Q*), and things went on at Hudson's Bay pretty much as they had done before, until the Treaty of Utrecht (10) transferred to the English the "Bay and Straits of Hudson, together with all lands, seas, sea-coasts, rivers and places situate in the said Bay and Straits, and which belong thereunto, no tracts of land or of sea being excepted which are at present possessed by the subjects of France." But it is agreed on both sides to determine within a year by Commissaries, to be forthwith named by each party, the limits which are to be fixed between the said Bay of Hudson and the places appertaining to the French. And "the above mentioned most Christian King" undertook that satisfaction should be given according to the rule of justice and equity to the English Company trading to the Bay of Hudson, for all damage and spoil.

(1) Talon to the King 2nd Nov., 1671, *Ib.*, p. 71.

(2) Denonville on the state of Canada, 12th Nov., 1685, *Ib.*, p. 280.

(3) Instructions by de Denonville, 12th Feb., 1686, Paris, Doc. V. p. 176, 2 Serie.

(4) Denonville to Minister, 10th Nov., 1686, *Ib.*, p. 259.

(5) Instructions to de Frontenac, 7th June, 1689, Doc. Hist. 9, p. 422.

(6) Garneau 2, p. 51.

(7) Garneau 2, p. 137. says the English lost all their forts by the capture of Fort Nelson 1697; but this is an error. See *note G*.

(8) 10-20 Sept., 1697.

(9) Memorial of Company, exposing state of their affairs, 19th January, 1701, Pownall papers M.S. in Parl. Lib. In the Quebec Act, the Company is thus styled: "The Merchants Adventurers of England, trading into Hudson's Bay."

(10) Article 10.

one to their colonies, ships, persons, and goods, by the hostile incursions and depredations of the French in time of peace, an estimate being made thereof by Commissaries to be named at the requisition of each party (1).

18. The stipulation to surrender the posts near Hudson's Bay, in the possession of the French at the time of the Treaty, was at once carried out, the forts being delivered up under orders from the King of France in 1714 (2).

19. Commissaries were appointed to define the limits, but they never arrived at any decision (*note R*); but both countries seem to have acquiesced in the idea that the watershed, or the height of land dividing the waters which flow north from those which flow south, was the real boundary between Canada and the Hudson's Bay territory.

20. This conclusion, with only slight variation, is supported by numerous maps, both French and English, by Douglas, who gives the whole line from the Atlantic coast; by Bellin (3), who gives the limits of Canada, and by Mr. Bouchette, Surveyor-General of Canada. In the map published by the Government of Quebec in 1870, the same line of highlands is unhesitatingly adopted. As it has been already shown, the principle that the watershed was the natural limit of an unexplored country was generally acquiesced in. The rivers were the only highways, and the utmost limit of a possession could hardly be interpreted to extend further than those claiming it could go.

21. Nor is there anything to contradict this view to be found in the voluminous correspondence between the authorities in Canada and the Government of France, from the time of the Treaty of Utrecht (*note S*) till the Treaty of Paris, by which England acquired Canada, put an end to the possibility of a question arising between the two countries as to the boundaries of the Hudson's Bay Territories.

22. But whether the conclusion at which we have arrived be legally correct or not, in so far as regards the right of the Hudson's Bay Company to the territory claimed by them, it is clear it was so understood by the Government in England; and, being so understood, a description in a document by competent authority, giving the Hudson's Bay territory as the northern limit of Canada, would limit Canada to the line understood to be the southern boundary of the Hudson's Bay territory. In other words, if the Hudson's Bay claim had been proved to be wholly unfounded, this would not of itself have extended the limits of Canada.

23. By laying down the height of land or watershed as the general rule by which the territory of Canada was to be distinguished from that of Hudson's Bay, results more important than any contemplated at that time were attained. The actual flow of the river was not then known, and it could not readily be imagined that the height of land which forms the watershed of the system of the St. Lawrence and the great lakes, should hem in as closely as it does the waters of Lake Superior. This fact, now perfectly established, reduces to very moderate proportions any claim the Province of Ontario could put forward, based on the idea that the western limits of la Nouvelle France, were also those of the late Province of Canada. The Treaty of 1783, which fixes the line of division between the British possessions and the United States, cuts this height of land, and with it defines the whole boundaries of the Province—north, west and south—even if the extreme pretension to which conclusion has just been made were adopted. A1.

24. But looking at the question from a strictly legal point of view, this pretension cannot be maintained. The terms of the Treaty of Paris, conveying certain territory to the Crown of England, could not possibly convey to the people of Canada, much less to any portion of them, any absolute territorial right to any particular extent of territory further than what they actually occupied, or what was afterwards conferred by competent authority (*note T*). They might seek to have certain limits

(1). Article 11.

(2). Jeremie (Noel Jeremie Lamontagne, see l'Abbé Ferland, 2de partie, p. 279 note) Recueil Voyages du Nord, vol 5, Amsterdam, 1732.

(3). Already quoted, p 8.



granted them as a matter of sentiment or convenience (1), but no one has ever pretended that the English Government was obliged to maintain under one government, the whole territory ceded to the Crown of England as Canada; and, in effect, no such unity has ever been attempted. The whole territory ceded by Vaudreuil as Canada, and claimed by England as such, has never for a moment been all included in any Government of Canada (*note U.*).

25. It is unquestionable law that after the cession of Canada, and until a regular Government was conferred by Statute, the Province remained a Crown Colony, and was subject to be governed under the special ordinances and instructions of the King. Hence it is we must turn to the Proclamation of 1763, to ascertain what was thenceforward to be considered as the Province of Quebec or Canada.

26. That Proclamation sets forth that the King, with the advice of his Privy Council, had granted letters patent, creating four distinct and separate governments within the countries and islands ceded and confirmed to the Crown in England by the Treaty of Paris (1763).

27. The first of these governments, that of Quebec, was declared to be bounded on the Labrador coast by the River St. John, and from thence by a line drawn from the head of that river through the Lake St. John to the south end of the Lake Nipissing, from whence the said line, crossing the River St. Lawrence and the Lake Champlain in 45 degrees of north latitude, passes along the highlands which divide the rivers which empty themselves into the said River St. Lawrence from those which fall into the sea, and also along the north coasts of the Baie des Charleux, and the coast of the Gulf of St. Lawrence to Cape Rosier, and from thence, crossing the mouth of the River St. Lawrence by the west end of the Island of Anticosti, terminates at the aforesaid River St. John, (*note V.*) A 2.

28. Several maps, published subsequent to the Treaty, give the limits thus described to Canada. (*note W.*) (2.)

29. The boundary to the south-west remained unchanged till 1774 (3). It included all the settlements of any importance at that time (*note X*). Burke (4) says "this boundary, fixed for the Government, was so because it was the boundary of the possession, and that the people of Canada acquiesced in it." (5) But on this point, perhaps, Burke was not a totally impartial witness, and he probably expressed the extreme pretensions of the Government he represented. At any rate the people of Canada did not approve of the limitation, and by their petition in 1773, they prayed that as under the French Government, their boundaries might be extended to the Mississippi. (6) (*note Y.*)

30. It seems, however, of very little importance in a legal point of view, whether the old Government of Canada as a French Province, really extended to the Mississippi, or whether the people of Canada acquiesced in the limits given by the King in his letters patent constituting the Government of Quebec or not; nor indeed does it signify, for the discussion at present, how far constitutionally the King had a right to carve Provinces and Governments out of the possessions of the Crown, for we are now arrived at the time when the limits of Canada were determined by Act of Parliament.

31. The 14 Geo. III, C. 83, (1774,) called the Quebec Act, after setting up the eastern boundaries, continues, and "thence along by the eastern and south-eastern bank of Lake Erie, following the said bank until the same shall be intersected by the northern boundary granted by the Charter of the Province of Pennsylvania, in case the same shall be so intersected; and from thence along the said northern and western boundaries of the said Province, until the said western boundary strike the

(1). They did by their petition of 1773. Doutre et Lareau Dr. Civil Canad. I, p. 674.

(2) Jeffrey's Map, 10th June, 1775. Also map in translation of Charlevoix. Dunn's Map. 1776, and see notes R and V.

(3) Burke, in Cavendish Debates, p. 189.

(4) Ibid.

(5) Ibid.

(6) Doutre & Lareau Droit Civil, Canad. I, p. 674.

Ohio; but in case the said bank of the lake shall not be found to be so intersected then following the said bank until it shall arrive at that point of the said bank which shall be nearest to the north-western angle of the said Province of Pennsylvania, and hence by a right line to the said north-western angle of the said Province, and thence along the western boundary of the said Province (Pennsylvania) until it strike the Ohio; and along the bank of the said river westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to "The Merchants Adventurers of England trading to Hudson's Bay." Section 2 of this Act contains the only limitation to this description; "Provided always, that nothing herein contained relative to the boundary of the Province of Quebec, shall in anywise affect the boundaries of any other Colony."

32. The boundaries laid down by the Act were deliberately adopted after much discussion (1). All the parties were either represented directly in the house or were heard by petition; and very notably the petition of the Canadians of the previous year had received due attention. The only difficulty which remained was foreseen. The unsurveyed boundary of the Province of Pennsylvania might, or it might not strike the bank of Lake Erie, and both cases were provided for; but about the line of the Ohio there could be no doubt. From the point at which it cut the western line of the Province of Pennsylvania, it constituted the boundary of Canada, until its confluence with the Mississippi. From that point the line was clearly defined; it was due north line, for that is the only interpretation which can be given to the words northward to the southern boundary of the territory granted to 'Merchants Adventurers of England trading to Hudson's Bay.' (note Z.)

This opinion, which indeed recommends itself naturally, is supported by the decision of Chief Justice Sewell, in the trial of de Reinhard at Quebec in 1818 (2), which judicially interprets the Act of 1774 in this sense. Nor can there be any doubt that the effect of these words in the Statute, was matter of law for the court to decide (3).

33. Curious to say, in the new Commission to Sir Guy Carleton, rendered necessary by the Act of 1774, a somewhat different boundary is described. After following the description of the Statute till the confluence of the Ohio and Mississippi, the Commission goes on: "and northward *along the eastern bank of the said river* to the southern boundary of the territory granted to 'The Merchants Adventurers of England trading to Hudson's Bay.'" The words *in italics* are an evident and very material addition to the Statute; and they either fell in with, or created the general impression that Canada, before the treaty with the United States (1783), extended to the Mississippi. This description also appears in a Commission of two years later date to Sir Frederick Haldimand, and very probably in other Commissions between 1774 and 1783; but no words in letters patent could alter the express dispositions of an Act of Parliament. The only manner in which the effect of the Act of 1774 could be destroyed would be by another Act of Parliament. Was there any such?

34. The Act of 1791 does not deal with the question of the western boundaries of the Province of Quebec. The subject of the precise boundaries of Upper Canada was then of some difficulty, for the Treaty of 1783 had not made clear the line which was to divide the British possessions from the United States. In this dilemma it was thought advisable to describe "the Upper district by some general words." (4) But whether, owing to the difficulties occasioned by the Treaty of 1783 or not, all description was omitted in the Act, and the King, by his Message of the 25th February, 1791, announced his intention of dividing "the Province of Quebec into two Provinces to be called the Province of Upper Canada and the Province of Lower Canada," whenever His Majesty shall be enabled by Act of Parliament to establish

(1) Cavendish Debates.

(2) Report of trial, p. 646.

(3) Attorney General of Upper Canada remarks, acquiesced in by the Court on the Trial ofarrant for the murder of Governor Temple, p. 267.

(4) Letter from Lord Grenville to Lord Dorchester, 20th October, 1789. Christy's History of Canada, Vol. 6, p. 16.



the necessary regulations for the Government of said Provinces. The Act being passed, the King, by proclamation, declared what should be the division line, but he abstained most carefully from entering into any other description of the two Provinces, and as Lord Grenville had suggested, used "some general words." Having established the boundary line of Hudson's Bay as the northern limit, the Upper Province is said to include "all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada."

35. It is maintained that what is called or known by the name of "Canada" must be taken to mean what was then known by law (*i.e.*, by the Act of 1774) as Canada, less the reductions under the Treaty of 1783, which are provided for by Section 2 (1) of the Act of 1774. But even if the words had another and more extended sense, it is further maintained that in so far they would be inoperative. The King's authority to make any proclamation at all to divide the Province depended on the implied consent of Parliament by the Act of 1791. He could only divide the Province of Quebec—he could not extend it by proclamation. (*Note AA.*)

36. This view is supported by Chief Justice Sewell in the case of *De Reinhard*, already cited. He said: "The intention of the Proclamation and Act of 1791 was to divide the Province, not to add to it." (*Note BB.*)

37. The Act (2) reuniting the Provinces of Upper and Lower Canada simply declared "that it shall be lawful for Her Majesty, with the advice of Her Privy Council, to declare or to authorize the Governor General of the said two Provinces of Upper and Lower Canada to declare, by Proclamation, that the said Provinces, upon, from and after a certain day, in such Proclamation to be appointed, which day shall be within fifteen calendar months next after the passing of this Act, shall form and be one Province, under the name of "the Province of Canada."

38. The British North America Act, 1867, is equally unambitious. The Province of Canada was divided by it, and the part which formerly constituted the Province of Upper Canada was declared to constitute the Province of Ontario.

39. Canada, then, as it stood after the Act of 1774, was divided into two Provinces, the two were again re-united; but the limits of the whole were not changed in so far as regards the north-western boundaries, until the Act constituting the New Dominion became law.

40. The limits of Ontario are, therefore, to the east, the Province of Quebec; to the north, the southern boundary of the Hudson's Bay territory (shown to be the height of land dividing the waters which fall into Hudson's Bay from those which fall into the St. Lawrence and the great Lakes); to the south, the northern boundary of the United States and longitude 89° 9' 27" 16 west of Greenwich to the west.

T. K. R.

Montreal, March, 1873.

#### MEMO.

In the report submitted the strictly legal view has alone been considered, because it alone seemed to be within the scope of my instructions; but from the course of my investigations I could not fail to see that beyond this there is another consideration not less important, and that is the equitable side of the question. In creating the Province of Ontario it is not possible to conceive that the Imperial Legislature intended to convey to that Province and to the Province of Quebec less territory than the late Province of Canada actually enjoyed. Now it is incontestable that up to 1867 the Government of Canada, *de facto*, extended to the height of land which forms the watershed of the water system of the St. Lawrence and the great lakes. This is made apparent by the registers of the Executive Council, by which we find that a Commissioner was appointed to obtain the surrender of the claims of the Indians to

(1) *Supra* p. 14.

(2) 3 and 4 Vic., c. 35 (Imp. Act), 1840.

the lands in the vicinity of Lakes Superior and Huron, or of such of them as may be required for mining purposes. The Commissioner executed a treaty by which he obtained a portion of the very territory that would be cut off from the Province of Ontario if the dispositions of the Act of 1774 were literally observed. "From Batchewanoning Bay to Pigeon River, at the western extremity of the said Lake (Superior), and inland to that extent to the height of land which separates the territory covered by the Charter of the Honorable the Hudson's Bay Company from the said tract and also the islands in the said lake within the boundaries of the British possessions therein."

There are doubtless other acts of authority beyond the meridian indicated in the foregoing report. In the De Reinhard trial, Mr. Coltman, a magistrate for the District of Quebec, and a Commissioner in the Indian territory, in his evidence, said: "Il est notoire que les writs des Magistrats du District ouest du Haut Canada sont émanés pour être exécutés à Fort William." It would, therefore, seem that in fairness to the Province of Ontario the old line of the height of land should be adopted as the western as well as the northern boundary of the Province of Ontario.

T. K. R.

Montreal, March, 1873.

#### NOTES.

*Note A.*—"They (France and England) prepared to cut the *gordian* knot of this long and intricate negotiation with the sword." ("The history of the present war," by Burke, in the first number of the Annual Register. Republished separately in 1774.)

*Note B.*—It is quite unnecessary now to discuss the validity of the Charter. It should, however, be remarked that the words "limiting the grant to such territories as are not already actually possessed by the subjects of any other Christian Prince or State," ceased to have any legal value after the Treaty of Utrecht. As between the King of England and the Hudson's Bay Company there could be no contest as to the rights of the French. I do not know whether the value of the particular words "actually possessed" has ever been commented. They exclude the idea of a claim of title by simple discovery or by any naked formality, and there can be no question that in 1670 the French had no *actual possession* of any part of the lands round Hudson's Bay.

*Note C.*—The report of the Commissioners of Crown Lands in 1857 is incorrect in saying that the commission to Roberval "included Hudson's Bay, though not then, of course, known by that name." The writer would have extended geographical knowledge had he told us by what *name* it was, and by whom known in 1540. It is possible the official writer mistook "The Great Bay," which is mentioned by Jeffrey (from whom he quotes), as the name by which Hudson's Bay was known in 1540? Then, and long after, "La grande baie" was the name given to the Gulf of St. Lawrence, from "le cap de St. Louis à l'entrée de la baie des Chaleurs." (Denis' Description de l'Amerique Septentrionale, 1672. Tom. I, p. 164, chap. 7.)

In the same report it is said that in "1627 the Quebec Fur Company was formed under the auspices of Cardinal Richelieu, and an exclusive charter granted to them for the whole of New France or Canada, described as extending to the Arctic Circle." This is incorrect. At the time it is not unlikely that the French Government knew little or nothing of the two early English voyages of discovery to Hudson's Bay, and they could not have known anything of these parts from their own voyages, for no French expedition had ever then been there. But the *arrêt* of 1627 does not men-



tion Hudson's Bay. It gives the Company the whole country from Florida, "en rangeant les Côtés de l'Amerique jusqu'au Cercle Arctique." (Ed. and Ords., Tom. I, p. 7. Quebec, 1854.)

*Note D.*—In the oft-repeated description by L'Escarbot it is said that la Nouvelle France is bounded to the north by "cette terre qui est dite inconnue vers la mer glacée jusqu'au pôle arctique." Thus he does not pretend that la Nouvelle France stretches to the Frozen Ocean (L'Escarbot, vol. 1, p. 31, ed. 1611), as Mr. Cauchon's Report seems to imply, but only to the unknown lands, which, in their turn, extend to the Frozen Ocean. Having quoted the passage of L'Escarbot referred to, Garneau adds: "Mais ces limites étaient plus imaginaires que réelles, puisque l'on ne connaissait pas alors même la vallée entière du St. Laurent."

*Note E.*—"Il est certain que ce fut Henry Hudson, anglais qui en 1611 donna son nom et à la Baie et au Détroit par où il entra." (Charlevoix 1, p. 476.)

*Note F.*—Mr. Justice Monk, in the case of Connolly vs. Woolrich, p. 14, says: "From the voyage of Sir Thomas Button in 1611 till the year 1667, it (Hudson's Bay) appears to have been wholly neglected by the English Government and Nation." There is, however, no doubt about the voyages of Fox and James.

*Note G.*—Médard Chouard des Grozeliers ("the name is spelled in a variety of ways," L'Abbé Tanguay writes: "Medard Chouart des Grozelliers,") Pierre Esprit Hayet-Radisson, and Pierre LeMoynes d'Iberville. These three names are intimately connected with the history of the early settlement of Hudson's Bay. Des Grozeliers came from Touraine when very young and became a voyageur of some repute. (Ferland, 2<sup>de</sup> Pie, p. 80. Jermie Rel. de la Baie d'Hudson, p. 14. Mère de l'Incarnation Lettre d'Août, 1670.) He reported that, being to the north of Lake Superior, he met some Indians who led him to James' Bay. Subsequently, he endeavored to induce the principal merchants in Quebec to fit out an expedition to visit the North Sea; but failing in this,\* he went to Boston, and from thence to Paris,† and finally to London, in search of persons sufficiently adventurous to carry out his scheme. In London his representations were favorably listened to, and a New England captain, Zacariah Gillam, was sent off with des Grozeliers in 1667 or 1668.‡ They built a fort, which they called Charles or Rupert, at the mouth of the Nemisco River. On their return, the Hudson's Bay Company was formed and obtained a charter, dated 2<sup>nd</sup> May, 1670.§ Nowhere is any date given to des Grozeliers alleged first jour-

\* Jeremie says that he did induce the Merchants in Quebec to fit out a bark with which he went to the Bay and discovered Nelson River; but the whole of his narrative up to the expedition of 1694, in which he was engaged, is totally worthless. He is, however, followed by Murray, who adopts the account of a sea voyage by des Grozeliers from Canada, and gives other details; for all of which he disdains to quote any authority. 2 p. 132.

† De la Potherie omits the going to Paris.

‡ Oldmixon says 1667; so does M. de Callières in a letter to M. de Seignelay, 25th February, 1685, Doc. Hist. 9, p. 797; Ferland says 1668, 2<sup>de</sup> pie, p. 80; Murray also says 1668, 2, p. 132. In the French Memoir of the 8th November, 1686, the year is given twice as 1662, Doc. Hist. 9; Charlevoix gives the year as 1663, vol. 1, p. 476; and in this he is followed by Garneau, 2, p. 126; but in the *Fastes Chronologiques* Charlevoix says 1668; again Dobbes says 1667, but later he says Gillam was there from 1668 to 1673; in the description of the right and title of the Crown of Great Britain to Hudson's Bay, June 2, 1709, Eng. MSS. vol. 1, p. 64, it is said that Zachary Gillam went there in 1667, in the "Nonsuch," to explore and make a settlement in Hudson's Bay, and built Charles Fort at Rupert River.

§ Ferland says 1669. He is not the originator of this error. I have seen it elsewhere. It arises from a miscalculation of the year of the King's reign. The Charter is dated the 2<sup>nd</sup> day of May, in the two and twentieth year of the King's reign. Charles the 1<sup>st</sup> was beheaded the 30th January, 1648; the 22<sup>nd</sup> year, therefore, began on the 31st January, 1670.

ney overland to James' Bay; indeed it was only formally put forward in 1636 (French Memoir, 8th November, 1686, Doc. Hist. 9) to sustain the French claim to be the first discoverers of the Bay. But curious to say, in the French Memoir, the year of the Gillam expedition is stated to be 1662. It is, however, perfectly certain that he did not go to the North in 1662, and that the Gillam expedition did not start before 1667—perhaps only in 1668. It seems more than probable that the story of the overland journey to James' Bay was an invention of des Grozeliers in order to draw the Quebec merchants into his scheme. Probably he had heard of Hudson's Bay from the Indians he met in the North-West; for difficult and tedious as was the overland journey, it was not impossible; and occasionally there was some intercourse between those living in Canada and Indians from the neighborhood of the Bay. Thus, in 1657, eight Canadians went up the Batiscan with twenty canoes of Algonquins. The voyage was rough, long and dangerous, though properous; and they met with the Kiristinons "*qui sont proche de la mer du Nord.*" (Journal des Jesuites, p. 217.) Again, in 1664, it is said 80 Kiristinons came as far as Montreal to look for a Missionary. (Ibid.) But it seems very odd if he had really made any such journey that the records of the Jesuits should be silent on the subject. From their Journal we learn that, in 1659, des Grozeliers did go up to Lake Superior, and passed the winter with the Nation de Boeuf, returning the following year to Canada with 300 Outawas and a great quantity of fur. He was at Three Rivers on the 24th August, 1660. Again we hear of him on 3rd May, 1662, and he then said he was going to La Mer du Nord. He passed the night at Quebec, and he wrote to the Governor from Cap Tourmente.\* We know nothing positive of his subsequent movements for some time; but it is not unlikely that after leaving Quebec, he passed the years from 1662 to 1667 advocating his project of a voyage to Hudson's Bay. This conjecture would also account for the error of the French Memoir in placing the date of the Gillam expedition in 1662. It would appear that des Grozeliers was accompanied by Radisson, to whose sister he was married, and that Radisson was married to an English woman. (De Frontenac's letter, 2nd Nov., 1681.) This marriage of Radisson is involved in great confusion. De la Potherie tells us that Lord Preston, who was Ambassador at Paris, promised to make a servant of his named Godet perpetual Secretary of the Embassy, if he could prevail on Radisson to go to England, and that Godet, as an inducement to Radisson, promised him his daughter in marriage (1,145). Charlevoix says that the negotiation took place through a servant of Lord Preston, called "Gods," (1, p. 481), and that Radisson was then married to a daughter of Chevalier Kirke; that he went to London, where he was cordially received by his father-in-law, and that he was granted a pension of 12,000 livres a year. Shea, in a note to his translation of Charlevoix (3,233), says that it was Sir David Kirke's daughter he married. Another account (Murray 2, 131) is that des Grozeliers was induced to go to England by Mr. Montague, the English Ambassador, who gave him a letter to Prince Rupert. Murray gives no authority for his version; but it is possible there may be some truth in all these stories, though certainly not all true. The following dates are correct, and contradict much of them. Des Grozeliers' first expedition to England must have been prior to the summer of 1668. Ralph Montague was Ambassador at Paris from September, 1668 to 1678. Radisson was married to an Englishwoman before November, 1681. (De Frontenac's letter, 2nd November, 1681.) Radisson's second visit to England was in 1684, and then Sir David Kirke had been dead nearly thirty years. He died in 1655 or 1656, (Shea's translation of Charlevoix 3,232-6 & 6, 124.) In 1670, Radisson accompanied the new Governor back to Hudson's Bay. We hear of him, and also of des Grozeliers, at Fort Nelson, in 1673, and at Fort Rupert in 1674. They obtained their pardon in 1676 from the King of France, and returned to Canada. I do not know when they returned to Canada, nor the date given by M. de Callières in his letter to M. de Seignelay, 25th

\* Under date May, 1662, in the Journal des Jesuites, there is this entry: "*Je partis de Quebec le 3 pour les Trois Rivières, je recontraí de Groselliers qui s'en alloit à la Mer du Nord. Il passa la nuit devant Quebec avec 10 hommes et étant arrivé au Cap Tourmente, il l'escrivit à Mons. le Gouverneur,*" p. 308.



February, 1685, he relied on, for he goes on to speak of the Canadian Company having been formed in 1676. This is evidently an error, if not an intentional misstatement, for in a memoir of the *Compagnie du Nord établie en Canada*, 1698, P. M. S. VIII., 265, it is said: "*Elle (la Compagnie) commença cette entreprise en 1682.*" Before we have anything more to do with Radisson in Hudson's Bay, he served under Marshal d'Estrées in the West Indies, and obtained permission from him to go in a vessel belonging S. de la Chesnay ("Aubert de la Chenaye" is one of the signatures to the *Memoire de la Compagnie du Nord*, 15 November, 1690, Paris, M. S. V. p. 156), to make settlements along the coast leading to Hudson's Bay. This was prior to November, 1681. (M. de Frontenac, 2nd Nov., 1681, Doc. Hist. 9.) In 1682 a company was formed at Quebec to trade to Hudson's Bay. This was the commencement of this enterprise. (*Memoire de la Cie. du Nord, établie en Canada*, 1698, P. M. S. VIII., p. 265.) There was a complaint by the English Ambassador that in 1682, Radisson and other Frenchmen had gone with two barks, called the "St. Pierre" and the "Ste. Anne," to Fort Nelson, and seized the fort and the property found there. (The King to M. de la Barre, 10th April, 1684.) They also took Benjamin Gillam, son of their old captain, prisoner. They also captured a Boston ship, and took it to Quebec. (De la Potherie I, 143.) M. de la Barre caused the ship to be restored to the owners, for which he was severely reprimanded by the Minister (10th April, 1684).

Des Grozeliers and Radisson, from some cause or other, became dissatisfied with their partners in the Hudson's Bay trade. It is not unlikely they were not over-pleased with the restitution of their capture. At all events, Radisson went to France in 1684. From France he went to London, induced by Lord Preston, as some say, and there he succeeded so well that the same year he sailed for Hudson's Bay with five ships. He captured Fort Nelson by surprise, 16th August, 1684,—(Instructions from M. de Denonville, 12th February, 1686), took prisoner his own nephew, together with all the Frenchmen he found there, and carried them to London. He also carried off an immense quantity of furs, and did the Canadian Company \$400,000 worth of damage. De la Potherie says 300,000 livres, which is more credible. After this, we hear very little of M. M. Des Grozeliers and Radisson. It would appear, however, that Radisson wintered in the Bay in 1685-'6, for the excuse for de Troyes' expedition was the capture of Radisson. (Instructions of M. de Denonville to de Troyes, 12th February, 1686; letter of de Denonville, 10th November, 1686.) In 1685, the Canadian Company obtained a charter (20th May). In 1686, de Troyes and d'Iberville went overland to Hudson's Bay. They first attacked Fort Monsippi or Moose Fort, which they took. They next surprised Fort Rupert. On the 16th July, they took Fort Chechouan or Albany. On the 10th August, 1686, de Troyes started on his return journey to Montreal. (De la Potherie I, p. 147; Ferland, 2nde partie, 164.) M. de la Potherie says that six months after, having sent the English prisoners home, d'Iberville went to Quebec; but it would appear, from a letter from M. de Denonville to M. de Seignelay, he was still supposed to be in command of the forts at Hudson's Bay on the 25th August, 1687. On the 31st October, 1688, M. de Denonville announces the return of d'Iberville, but says he was to return to the Bay. In 1688, it would seem, the English built Fort Churchill, towards the end of the year. (*Memoire de la Cie. du Nord*, 15 November, 1690.) In 1688 d'Iberville took two English ships. (See the account given of it in the letter of the Sr. Patu de Quebec, 14th November, 1689, and in d'Iberville's letter of the 17th, in which he promised to go back next year and take Fort Nelson, if he could obtain the assistance he required.) Fort Churchill was captured by the French in 1689 (*Memoire de la Cie du Nord*, 15th November, 1690.) In 1690 d'Iberville returned, intending to take Fort Nelson, but being repulsed he landed and forced the English to abandon Fort Nicu Savanne. He had gone there with three ships called "La Sainte Anne," "Les Armes de la Compagnie," and "Le Saint François." In 1693, the English re-took the Forts Chechouan or Albany, Monsippi or Moose Fort, and Rupert. (De la Potherie I, 165.) No one but de la Potherie mentions the re-taking of Moose Fort and Fort Rupert, and in 1700 the Hudson's Bay Company complain of the French

encroachments, saying that, owing to them, they have only one settlement remaining out of seven they had. It would, therefore, seem that if the English retook Moose and Rupert Forts, they lost them before 1700. In 1694, d'Iberville, in command of two of the King's ships, which were lent to the Company, sailed for Hudson's Bay to retake Fort Nelson. Jeremie, who was in the expedition, says the two ships were the "Poli" and the "Charente." He is followed in this by l'Abbé Ferland, (2 Pie, p. 278.) P. Marest, who was also in the expedition as "aumonier," says de Serigny commanded the "Salamandre," and his relation is called "*voyage du Poli et Salamandre.*" (Lettres Ed. Nouv. Ed. vol. VI., p. 4.) In the letter of M. M. de Frontenac et de Champigny to the Minister, 5th Nov., 1694, it is said that de Serigny commanded the "Salamandre." De Bacqueville de la Potherie, who was the King's Commissioner in the expedition of 1697, says that the ships sent out in 1694 were the "Poli" and "Salamandre" (vol. 1, 1661.) He says they sailed from Quebec on the 8th August, de Frontenac et de Champigny says the 9th August, and Jeremie says the 10th August, jour de St. Laurent (p. 17.) M. M. de la Potherie and Jeremie agree that they reached Fort Nelson the 24th September; L'Abbé Ferland says the 20th September. The Fort capitulated on the 12th October. D'Iberville remained at Fort Nelson fifteen months. He then returned to Canada, leaving La Forest as Governor. In 1696 the English returned, recaptured Fort Nelson, and carried off the Governor and all the Beaver. The capitulation by La Forest of Fort Nelson (alias York, alias Bourbon), is that mentioned in the 8th Article of the Treaty of Ryswick. The capitulation was dated 31st August, 1696, but it is spoken of as the capitulation of the 1st September, and in the Treaty as of the 5th September. In 1697 a fleet of five ships sailed from La Rochelle to retake Fort Nelson, namely, "Le Profond," "Le Palmier," "Le Weesph," "Le Pelican," and "Le Violent." M. de la Potherie went as the King's Commissioner. "Le Violent" was crushed in the ice. Action between the "Pelican," the "Hampshire," the "Dering" and the "Hudson's Bay," 3rd September. The "Hampshire" was sunk by the French ships; the "Hudson's Bay" was captured, and the "Dering" escaped. "Le Pelican" was very much shattered in the action with the English ships, and went ashore next day in a storm and was lost. The other three French ships coming up, d'Iberville attacked Fort Nelson, which he took about the 12th September. D'Iberville left his brother, de Serigny, in command of the Fort, and sailed on his return voyage on the 24th September. (de la Potherie, 1, p. 183; Jeremie, who was also in this expedition, and who remained with de Serigny at the Fort). At this point M. Garneau exclaims "Ainsi le dernier poste que les Anglais avaient dans le baie d'Hudson tomba en notre pouvoir, et la France resta seule maitresse de cette région," (2 p. 137). M. Garneau totally overlooked the three forts in James' Bay retaken by the English in 1693, and one of which, Fort Anne or Chechouan, he mistook for Fort Nelson. At any rate Fort Anne or Chechouan remained in possession of the English from 1693, and they never lost it. It was unsuccessfully attacked by de Menthel in 1709. (Paris M.S. 11, p. 123; Letter of de Vaudrenil to the Minister, 25th October, 1710, p. 139.)

To avoid confusion, it may be well to enumerate the forts, and to give their different names. In 1700, the company said that they had had seven forts, and that by the encroachments of the French there remained to them only one. (Pownall papers MSS.) Six of the seven only appear to have given rise to any contest; the seventh I presume to be East Main. The six others are—

1st. Fort Rupert, called by the French St. Jacques, founded in 1667 or 1668 by Gillam. Taken by the French under de Troyes and d'Iberville July, 1686. Retaken by the English in 1693.

2nd. Fort Mississippi, Monsonis, St. Louis, or Moose Fort, taken by de Troyes and d'Iberville about the 20th June, 1686. Retaken in 1693.

3rd. Fort Chechouan, Ste. Anne, or Albany, taken by de Troyes and d'Iberville in 1686. Retaken in 1693.

4th. New Severn, or Nieu Savanne, taken by d'Iberville in 1690.

5th. Fort Bourdon, Nelson or York, founded in 1670. Taken by des Grozeliers and Radisson, acting for the French, in 1682; retaken by Radisson, acting for the



English, in 1684; retaken by d'Iberville 12th October, 1694; retaken by the English 1696, and again by the French in 1697. It remained in the possession of the French until 1714, when it was given up under the Treaty of Utrecht.

- 6th. Fort Churchill, built 1688, and taken by the French in 1689.

*Note H.*—In the memoir of the French right to the Iroquois country and Hudson's Bay of the 8th November, 1686, it is said that in 1656 Jean Bourdon ran along the entire coast of Labrador with a vessel of 30 tons, entered and took possession of the North Bay, and that this is proved by an extract of the ancient register of the Council of New France of the 26th of August of the said year (1656.) Unfortunately the register in question is not now in existence; but if it were, it could not prove what the writer of this memoir pretends. At most it was but an authorization\* to Jean Bourdon to undertake the voyage to the coast of Labrador, and not a recital of what he actually did, for Bourdon's voyage was in 1657 and not in 1656. He sailed from Quebec on the 2nd May, 1657, and returned on the 11th August of the same year at ten at night. (*Journal des Jésuites* pp. 209-218.) But we are not left in any doubt as to the extent of Bourdon's voyage. On reference to the "*Relations des Jésuites*," vol. III., 1658-9, we find this entry: "Le 11 (August) parut la barque de "Monsieur Bourdon, lequel estant descendu sur le grand fleuve du côté du Nord, "voyagea jusques au 55 degré, ou il rencontra un grand banc de glace, qui le fit "remonter, ayant perdu deux Hurons qu'il avait pris pour guides. Les Esquimaux "sauvages du Nord les massacrèrent et blessèrent un François de trois coups de "flèches et d'un coup de couteau."

*Note I.*—Dablon never reached Hudson's Bay; the extreme limit of his journey being only 100 leagues from Tadousac. We learn from the "*Journal des Jésuites*," that he started for "la Mission St. Fr. Xavier aux Keristinos" the 11th May, 1661, p. 296. He left Tadousac on the 1st or 2nd June. On the 6th, the Iroquois attacked Tadousac, and drove away all the Canadians. They even came up to the Isle d'Orleans and the Côte Beaupré, and killed several persons. At page 300 of the *Journal*, there is this entry: "1661, Juillet le 27, retournèrent ceux qui étoient allés ou prétendoient aller "à la mer du Nord ou aux Kiristinos P. Dablon, &c." In the "*Relation des Jésuites*," we have the relation of this voyage, which is called "*Journal du premier voyage fait vers la mer du Nord*." (12 août 1661.) The account is dated from the highest point they reached, "Nekouba, 100 lieues de Tadousac, 2 Juillet, 1661." See also *Journal of Count of Frontenac*, 1673, when the importance of making it appear that Dablon had been at Hudson's Bay was fully understood. (*Doc. Hist.*, vol. 9.)

*Note J.*—The voyage of Albanel and St. Simon is not open to the same objections as that of Dablon. It would appear that they performed the whole journey from Canada to Hudson's Bay, and that they took formal possession in the King's name. (*Relation de 1672*.) The difficulty to this voyage as giving a title to the King of France, is that it came too late (1671-2), and after the English were in possession of Hudson's Bay. Besides, it was only a formality, for the French took no steps towards making a settlement there till 1682. (*Ferland*, 2nde partie, p. 83.)

*Note K.*—The dealings with the Indians from Hudson's Bay cannot be relied on as a title. Besides, we have the repeated assurance that trade with Hudson's Bay could only be carried on by sea (*Denonville on State of Canada*, 12th Nov., 1685, *Doc. Hist.* 9; *Letter from Denonville au Ministre*, 10th Nov., 1686; *Paris*, *Doc. MS.* V; same to de Seignelay, 25th August, 1687, *Doc. Hist.* 9; *Memorial de la Cie. du Nord*, 1698.) This conclusion had not been arrived at without an effort to keep up

\*Besides see letter of M. de Callières to M. de Seignelay, 25th February, 1685.

communication by land. M. de la Barre, on the 9th November, 1683, writes: "The people who have been at Hudson's Bay have returned after having encountered extreme dangers." \* \* \* "It is expected that communication can be had with it overland, as will be seen by the maps he sends."

*Note L.*—Dobbes says that Hudson's and Button's Journals are not to be found. Murray says: "It is remarkable that no original of this voyage (Button's) has been published, and that it is not even mentioned by Purchas, who made it his business to collect accounts of all voyages made at this era." (Vol. 2, p. 56.) In Rose's Biographical and Geographical Dictionary, it is said there is an extract of Button's Journal in Purchas. Both the Biographical Dictionary and Mr. Murray are in error. There is no extract of the Journal in Purchas. On the contrary, Purchas says he had not seen the Journal, but he had seen the chart, which was also seen by Champlain, p. 926, ed. 1617. Murray, probably, had only looked at the first edition of Purchas, which was printed in 1613, so that it was hardly possible for it to contain any mention of Button's voyage, which only terminated that year. Although not in Purchas, a fragment of Button's Journal was communicated to Fox by Sir Thomas Roe. (Hakluyt Society Papers. See also Appendix.) Even in the absence of any mention of Button's Journal in Purchas, there is no doubt of the voyage having taken place. It is not questioned by foreign writers. As an example, see *Anecdotes Americaines*, Paris, 1776, by Hornot.

It is hardly necessary to answer the doubt thrown out by the French Memoir and by Dobbes on Hudson's voyage. If we have not Hudson's Journal, which, under the circumstances, is not very remarkable, we have, at all events, the account of Prieket, who, in his own justification, wrote an account of the mutiny; and, in doing so, he mentions Hudson's discoveries. (Harris' complete collection of Voyages and Travels, 2, p. 244.)

*Note M.*—There is a great uncertainty as to what sort of discovery or occupation gives a title.

In the report of the Commissioner of Crown Lands in 1857, it is maintained, citing the Oregon dispute as an authority, that a discovery "not made known to the world either by the discoverer himself or by his Government, has no value." This would destroy one of the Commissioner's own pretensions.

M. Denonville, in a *mémoire* on the French limits in North America, in 1688, makes the right depend on discovery, and "planting the arms of the King or Prince." But the French officials urged claims, owing to voyages where no such formality was or could be complied with.

*Note N.*—In 1671, the French authorities in Canada could not venture to fix a date for the first taking possession of Hudson's Bay. In Tallon's Memoir to the King, 2nd November, 1671, he says: those countries were *anciennement* discovered by the French; (Doc. Hist. vol. 9.) It seems to be only in February, 1685, that the French detailed their pretensions. The 15th May, 1678, the French Minister, writing to M. du Chesneau, takes exception to what du Chesneau had written about giving passes to private persons, and remarks: "It is of advantage to the King's service to go towards that Bay, in order to be able to contest the title thereto of the English, who pretend," etc. On the 15th August, 1683, the King, writing to M. de la Barre, recommends him "to prevent as much as possible the English establishing themselves in Hudson's Bay, possession whereof has been taken in my name *several years ago*." (Doc. Hist. 9.) In the Relations des Jésuites, the narrative of the voyage of P. Dablon is called "Journal du premier voyage fait vers la mer du Nord." This was in 1611. In the relation of 1667, they say they know nothing of the country, but the reports of the Indians. (1667, 23.) On the 18th March, 1688, M. Denonville is instructed to make the strictest search possible for titles. In a letter of



August, 1670, la Mère de l'Incarnation, who knew des Grozeliers well, because he was from Touraine, from which Province she came, mentions the expedition of des Grozeliers in the English ship, and speaks of him on that account, as being the discoverer of the Bay.

*Note O.*—Commissaries were named under the Treaty of Neutrality, on the part of England. They were the Earl of Sunderland, Lord President of the Council and Principal Secretary of State; the Earl of Middleton, Principal Secretary of State; and Lord Godolphin, one of the Lords Commissioners of the Treasury. On the part of France, the Pr. Barillon, Ambassador, and the Pr. Bonrepaux, Envoy Extraordinary. They had their first conference 18th May, 1687. (Doc. Hist. 3, p. 506.) In 1687, complaints were made of the injuries done by the French. (Collection of Treaties, 1648 to 1710.) It would seem the Commissaries arrived at no conclusion, and in 1687 the English Commissaries report that the Company have full right to the Bay and Straits of Hudson, and to the trade thereof. (1 vol. Trade and Plantations, MS. p. 89; Pownall Papers in Lib. of Parl.)

*Note P.*—They lost all their forts save Nelson in 1686, and Garneau says they lost their last fort in 1697. (Garneau, vol. 1, p. 137.) But this is an error. (See note G.) On the 20th, 1701, the Governor and Company of Hudson's Bay petitioned the Lords Commissioners of Trade and Plantations on the subject of their losses in the Bay. In this petition they say they have lost all their settlements but one out of seven, namely, "Albany, vulgarly called Chechouan."

*Note Q.*—The Treaty of Ryswick was not altogether so disastrous to the Hudson's Bay Company as it is represented. In order fully to understand its operations, its terms must be brought into relation with the position of the contending parties there.

Article VII. stipulated that within six months, or sooner if it could be done, the King of France should restore to the King of England all countries, islands, forts and colonies wheresoever situated, which the English possessed before the declaration of the war (1689), and that, on the other hand, the King of England should do likewise for the French possessions.

By Article VIII. it was stipulated that Commissioners should be appointed to examine and determine the rights and pretensions which either of the said Kings had to the places situated in Hudson's Bay. But the places taken by the French during the peace preceding the present war, and retaken by the English during the war, should be left to the French. The capitulation of the 5th September, 1696, was to be carried out, the Governor then taken released, and the merchandize to be valued by commissioners, who were also to decide what lands belonged to the French and what to the English.

From these two articles we deduce, first, the general principle that there should be a mutual restoration of conquests made during the war; second, that the affairs of Hudson's Bay gave rise to a question, to be settled by a joint commission, which might make it an exception to the general principle in so far as regards English conquests during the war; third, that until the Commissioners should decide as to the merits of this question, English conquests during the war should follow the general principle; fourth, that the capitulation of the 5th September, 1696 (during the war), should be carried out.

Commissaries were appointed, but it does not appear that they settled anything. Their dilatoriness caused some comment. (Letter of Frontenac to Bellomont, 21st September, 1698; Lords of Trade to Bellomont, 5th January, 1698-9, the King to Frontenac, 25th March, 1699; letter from de Callières to Governor Nanfan 6th August, 1699.) While the Commissaries negotiated, events in Europe were preparing the way for a new war. By his will, Charles II., who died 1st November, 1700

bequeathed the Crown of Spain to the grandson of Louis XIV. On the 24th November the King of France accepted the succession for his nephew. This led, early in 1701, to the negotiations for the Grande Alliance, which was signed 7th September, 1701. On the 16th September James II. died, and Louis XIV. recognized his son as King of Great Britain, in violation of the Treaty of Ryswick. This caused the Emperor to add another article, to the effect that he would not treat of peace with France until she had offered England reparation for this affront. France having refused to do this, war was declared by the States General, 8th May, by Great Britain 14th May, and by the Emperor 15th May, 1702. *Garden Hist. des Traites de paix*, Tom. 2, ch. x.

*Note R.*—Both the Treaties signed at Utrecht—the Treaty of Commerce and the Treaty of Peace—required the appointment of commissaries to regulate certain questions that could not be determined summarily. The treaties were signed on the 13th April, 1713, and no great time was lost in appointing commissaries. Those representing the King of France were M. M. Anison and Fenelon, *Deputez au Conseil de Commerce*, whom Lord Bolingbroke had, on a previous occasion, contemptuously styled “Mercantile Politicians,” and M. d’Iberville, a diplomatist of some note, who must not be confounded with the Canadian sailor of that name, who died in 1706 at Havana. (*Pownall papers*, v. 7.) Messrs. Anison and Fenelon, arrived in London on the 17th February, 1713–4, (Lord Bolingbroke’s letter of the 19th, *Pownall papers*, v., p. 19). M. d’Iberville, who had preceded them, arrived before the 17th December, 1713, on which day he had an interview with Lord Bolingbroke, to whom he brought a special letter of introduction from M. de Torcy, dated the 14th December (letter to the Queen 8th December, 1713; *Ibid*, 17th December, Bolingbroke’s correspondence, vol. IV., p. 387). The English commissaries were Charles Whitworth, James Murray, Esq., Sir Joseph Martin, Kt., and Frederick Herne, Esq., (letter to Mr. Whitworth, December 23rd, 1713, correspondence IV., 408). There was no mention of M. d’Iberville in the commission of the King of France, dated Versailles, 10th February, 1714; but he desired to take part in the discussions under his private instructions. It appears that this difficulty was overcome by the issue of a new commission including M. d’Iberville, of the same date as the other. Another difficulty soon presented itself. The inhabitants of Montserrat had sent a petition to the Queen, and the Hudson’s Bay Company sent a memoir, setting forth their claims. The petition and memoir were forwarded by Lord Bolingbroke to the Lords Commissioners of Trade and Plantations who at the same time intimated that the commissaries “now here” have not “any powers to treat upon the said matters,” (*Pownall papers*, v., p. 35). It would seem that the difficulty as to powers had been already raised, and been admitted by the French commissaries who wrote to the King for “more ample powers,” (London, 11–12th March, 1714; *Ibid*, p. 22). In May the Commissioners of Trade and Plantation wrote to Mr. Martin, Secretary to the English commissaries, to know whether the French commissaries were empowered to treat upon the subject matter of the memorial and petition pursuant to the 10th, 11th and 15th Articles of the Treaty of Peace with France (Minutes of the 11th May, 1714. 1b). Mr. Martin answered on the 12th, saying, that the French commissaries were not empowered to treat about Hudson’s Bay and the Island of Montserrat; but that the Envoy of France, M. d’Iberville, had told Mr. Whitworth that a general orders from his Court, whenever demanded, and he should receive more particular Commissioners of Trade and Plantations immediately resolved that the commissaries of France should be notified that the commissaries should be named to treat of these matters pursuant to the 10th, 11th and 15th Articles of the Treaty of Peace.

It is somewhat odd that there should have been any question on this point, for neither in the Queen’s instructions to the English commissaries, nor in the commission of the French commissaries was there any reference to the Treaty of Peace. It does not appear that more ample powers were ever accorded to those commissaries,



and on the 9th June, 1714, the English commissaries report the deliberations "at a stand." Thus the first effort to establish the limits of Hudson's Bay failed.

The death of the Queen, and the change of policy which followed on the succession of the House of Hanover, put an end to any immediate prospect of settling these delicate questions as to boundaries. The Treaty of Utrecht was no longer popular, and nothing seems to have been done in the matter for some years. The next mention of the subject, I have found, is contained in a despatch to MM. de Vaudreuil and Begon, dated 23rd May, 1719. (Doc. Hist. v.) In this despatch, the King says he has instructed his Ambassador in England to propose the nomination of commissaries on both sides agreeably to the Treaty of Utrecht, for the settlement of the boundaries of New France. With the materials within my reach, I have not been able to trace the steps taken to fix these boundaries; but having had communication of the notes of Chief Justice Draper, who went to England in 1757, to represent the late Province of Canada before a Committee of the House of Commons, I take the liberty of copying from him. The Chief Justice says: "On 3rd September, 1719, instructions were given to Daniel Pulteney and to Martin Bladen, Esqrs., as Commissioners for Great Britain, under several Articles of the Treaty of Utrecht, which, after a special reference to the 10th Article of the Treaty, proceeds thus: 'You are to endeavor to get the said limit settled in the following manner, that is to say,' giving a particular description, and then adding: 'But you are to take especial care in wording such articles as shall be agreed on with the commissary or commissaries of His Most Christian Majesty on this head that the said boundaries be understood to regard the trade of the Hudson's Bay only; that His Majesty does not thereby recede from his right to any lands in America, not comprised within the said boundaries.'" In a letter dated Paris, 7th Nov., (N.S.) 1719, Colonel Bladen writes to the Lords of Trade: "And this day we shall deliver in the Company's demand upon that subject (the boundary of Hudson's Bay) in the terms of our instructions, although I already foresee some difficulty in the execution of this affair, there being at least the difference of two degrees between the best French maps and that which the Company delivered us."

"Again, in November, 1719, Lord Stair and Colonel Bladen delivered to the Mareschal d'Estrees, one of the French Commissaries, the demand of the H. B. Company. The other French Commissary, the Abbe Dubois, (afterwards Cardinal), was prevented by indisposition from attending.

"On the 3rd January, 1720, Lord Stair wrote to Secretary Craggs; 'J'ay parlé "aussi touchant la commission pour les limites son A. R. ma assuré qu'on tiendrait "incessamment des nouvelles conférences.'"

"Similar assurances were transmitted to Lord Stair from the French Regent in several letters."

"On the 29th February, 1720, Lord Stair wrote: 'De la maniere que Mons. le Marechal d'Estrees, m'a parlé aujourd'hui nous seront encore du temps sans voir renouer les conférences sur les limites en Amerique.'"

(The French spelling is Lord Stairs. Copied from originals. Note by Chief Justice Draper.)

"14th April, 1718, Mr. Secretary Craggs writes to Mr. Pulteney, then at Paris 'As my Lord Stair is on the point of leaving Paris, H. My. would have you use this occasion, either yourself directly or by His Excellency, as you shall judge proper, to demand some peremptory answer upon the subject of your commission, and whether the French Court will renew the conferences with you; which, if you find they will not, H. My. thinks it needless, in that case, for you to make any longer stay at Paris and would have you say you are to come away, but not come away until such time as you shall have further orders from hence.'"

"Mr. Pulteney's letters, which I have examined, showed that he and Lord Stair made many fruitless attempts to get the French Commissaries to meet them, but though repeated promises were made, there was no meeting after Colonel Bladen had submitted the British proposals and the map."

Colonel Bladen was again in Paris in 1722, but his letters made no allusions whatever to the limits in America. They refer to some matters connected with Ste. Lucie, as to which it does not appear whether any arrangement was made."

"By a letter from Sir Robert Sutton to Secretary Craggs, dated Paris, 8th September, 1720, it appears nothing had been done in regard to 'settling the limits in America, beginning with Hudson's Bay.'"

I could not trace any further correspondence on this subject in the State Paper Office until after the Treaty of Aix la Chapelle (October, 1748.) But in July, 1750, the H. B. Company were again called upon to lay before the Lords of Trade an account of the boundaries granted to them, and they repeat what their former memorials stated on the negotiations for carrying out the Treaty of Utrecht. They refer to their proposals as what they still desired, and they stated that the Commissioners under that treaty were never able to bring the settlements of those limits to a final conclusion."

"But there is a letter from the Duke of Bedford to the Earl of Albemarle, dated 12th February, 1749-50, stating that the commissaries for settling the limits will be ready to set out for Paris as soon as Governor Shirley has finished some affairs now depending with the Board of Trade, and on the 16th April, 1750, the Duke of Bedford writes to the Earl of Albemarle to the effect that Mr. Shirley and Mr. Mildmay, or one of them, will be in Paris 'as soon as this letter,' to act as Commissioners, there to settle the difference between England and France as to encroachments of the latter in North America."

The French commissaries were M. Silhouette and M. de la Galissonnière. They sailed from Quebec in the "Leopard," on the 24th September, 1749, to return to France to meet the English commissaries, General Shirley and Mr. Mildmay (Ferland, 2nde Pie, p. 495). These commissaries had no greater success than those who preceded them. In the private instructions from the King to M. de Vaudreuil, of the 1st April, 1755 (Doc. Hist. 10), it is stated that commissaries had been appointed on both sides, that they did meet at Paris to regulate all the disputes concerning the French and British possessions. The King regrets that the success of the labors of these commissaries to the present time did not correspond to the hopes he had entertained, and that as yet the commissaries had not entered on the limits of Canada further than what regards Acadia. It seems they never did enter seriously on the question of the limits of Canada. Several bulky volumes made known to the world what they did. The first of the papers exchanged is dated September, 1750, and the last the 7th June, 1755; by a strange coincidence, the very day Boscewen captured the "Lys" and the "Alcide." The only tangible proposition I have found in all these volumes is that the St. Lawrence is to be the centre of Canada. The English commissaries say they do not know what is meant by that; neither do I.

The capture of the "Lys" and the "Alcide" was really the recommencement of hostilities between France and England, but the formal declaration of war was not until the 18th May, 1756. There was, however, an end of negotiation until after the taking of Quebec, when negotiations were recommenced. They lasted from the 26th March to the 20th September, 1761. (See the "Memoire historique sur les negociations de la France et de l'Angleterre," prepared by the King's order by the Duc de Choiseul, Paris, 1761.) Those were, I believe, the last negotiations until the Treaty of Paris (1763.)

In the meantime, it would appear, that so far as the Hudson's Bay territory was concerned the limits were practically settled.

In a map by John Senex, F.R.S., 1711 (A 3) we find a dotted line indicating a division between Canada and the Hudson's Bay territories, similar to the one described and claimed by the Hudson's Bay Company. In a map in Carver's travels (1778) this is carried out to the Atlantic. In Mitchell's map (1755), (A 4), there is a line similar to that on Senex's map, with the words, "Bounds of Hudson's Bay by the Treaty of Utrecht." Bennett's map of 1770 coincides with Mitchell's. Bouchette's British Dominions, 1, p. 30.) In a map published from 1754 to 1761, by John Roque, Topographer to His Britannic Majesty, we have much the same line,



called "Southern boundaries of Hudson's Bay territories as settled by the commissaries of the Treaty of Utrecht." In Vaugondy's map (he was son of the geographer to the King of France), in 1750, we find a similar line, but without any words explaining it. (A 5.) Douglas in his summary, published in 1747, says: "By the Treaty of Utrecht the Canada or French line with Hudson's Bay Company or Great Britain was ascertained, viz., from a certain promontory upon the Atlantic Ocean in lat. n. 56 deg. 30 min., to run s.w. to Lake Mistassin (which communicates by Indian water carriage by P. Rupert's River with Hudson's Bay, and by Saguenay River with St. Lawrence River at the Port of Tadousac, thirty leagues below), and from thence continued s.w. to lat. n. 49 deg., and from thence due west indefinitely."

It is not maintained that the lines shown on these different maps are identical. Mr. Bouchette has remarked on the difference between Mitchell's and Bowen's, the latter giving the 49th parallel. But it is evident they were all aiming at the same natural division—the height of land dividing the waters flowing to the north from those which flow to the south.

The subject of maps would not be fully disposed of without some allusion to the map accompanying the Report of the Commissioner of Crown Lands in 1857, and which appears at the end of the Hudson's Bay Report of the House of Commons of that year. A dotted line enclosing Hudson's Bay is given with the following description: "Boundary of Hudson's Bay after the Treaty of Utrecht, 1703 (*sic*), according to maps published at Paris in 1720, 1739 and 1771. Another line, giving a little more space to the Hudson's Bay territory, is thus described: "Northern boundary of Canada at the conquest, according to British Geographers." Nothing is more easy than to manufacture history thus. Who are the British geographers? I presume the French maps alluded to are—1720, Delisle's map of the Western hemisphere; 1739, map by the same, published not at Paris, but at Amsterdam; and Vaugondy's map of 1771. Neither of the two first give any boundaries to Hudson's Bay territory. Vaugondy's map of 1771 is, of course, no authority, for it comes after the Treaty of Paris.

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*Note S.*—In the correspondence between Canada and France I have found two allusions to Hudson's Bay after 1713. On the 8th October, 1744 M. de Beauharnois, in writing to Count Maurepas, says that the King recommended him to neutralize or utterly destroy the English Forts at Hudson's Bay. (Doc. Hist. 9). And the following year (18th June, 1745) M. de Beauharnois explains why he could not carry out the King's orders in this respect.—*Ibid.*

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*Note T.*—This did not escape the perspicacity of the author of Crown Lands Report of 1857. He says: "The most direct interest that Canada could have in the matter at the present moment, being responsible for the administration of justice, would be rather of a moral and political than of an interested or commercial character."

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*Note U.*—La Nouvelle France, as understood by the French, has never been under one government. The Province of Quebec was first limited in the east by the River St. Jean, in the west by the line from Lake Nipissing, which struck the St. Lawrence about 15 leagues from Montreal. It was then extended, but the extension did not include the territory ceded by Vaudreuil, and claimed by England as Canada; a part was then ceded to the United States by Treaty, 1783). What remained was divided into two Provinces (1791), again reunited into one (1840), and lastly, the remnant is joined at once or prospectively to the whole of B.N.A. (1867).

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*Note V.*—In Dunn's map, 1776, this boundary is given as the "Old Boundary by which the French possessed Canada." It is curious that in Vaugondy's map of 1750 (A 5) a similar line is marked out without anything to show what it was intended

to limit, and the paucity of materials prevents our finding out the history of this line. Vaugondy's father was historiographer to the King of France.

*Note W.*—By the Act of 1774 all the territories and countries heretofore part of the territory of Canada which are within the limits of some other British Colony, or which have, since the 10th February, 1763, been made part of the Government of Newfoundland, during His Majesty's pleasure, are annexed to and made part of the Government of Canada. In conformity with this disposition, so much of the Commission of the Governor of Newfoundland was revoked "as related to the Coast of Labrador, including the Island of Anticosti, with any other of the said small islands on the said Coast of Labrador."

*Note X.*—In 1721 Charlevoix writes: "Jusqu' à présent la Colonie Francaise n'allait pas plus loin à l'ouest," than the Lake of the Two Mountains and Isle Perrot.

*Note Y.*—It is curious how deeply rooted was the desire to have the Mississippi recognized as the western boundary of Canada. The people of Canada claimed this in 1773, and the King immediately after the Act of 1774 describes the limits of Canada in his Commissions as following the banks of the Mississippi. Mr. Bouchette, however, did not fall into this error, and in his later and more important work he quotes and comments a document which negatives this pretension in the most formal manner. Up to the time of ceding Canada to England it was the interest of France to make its limits as extensive as possible, while the interest of England was directly the reverse; but when the negotiations which led to the Treaty of Paris were being carried on, the interest changed. France sought to circumscribe the limits of the provinces she had promised to cede, while England sought to extend them. England, by its answer of 1st September, 1761, to the French ultimatum, claimed "d'un côté le lac Huron, Michigan et Supérieur et la dite ligne (la ligne de ces limites) tirée depuis le lac Rouge, embrasse par un cours tortueux la rivière Ouabache jusqu' à sa jonction avec l'Ohio et de là se prolonge le long de cette dernière rivière inclusivement jusqu' à son confluence dans le Mississippi," being the limits as traced by the Marquis de Vandreuil in capitulating. The King of France, as he had promised to cede the possession of Canada "dans la forme la plus étendue," says in reply to the English answer to the French ultimatum, "comme cette ligne demandée par l'Angleterre est sans doute la plus étendue que l'on puisse donner à la cession le Roi veut bien l'accorder." (13th Sep., 1761, *Memoire du Duc Choiseul*, 1761.) Le Duc de Choiseul in his memoir, p. 139, says: "Il était prescrit à M. de Bussy de "convenir des limites du Canada et de la Louisianne d'après la carte angloise quoique "très de favorable aux droits et aux possessions de la France." Vandreuil denied having made the tracing in question, and the map has not been found. Was it that mentioned in the French reply as having been presented by Mr. Stanley? On the annexed map A 2, the green line marks the probable "cours tortueux" to the Wabash.

*Note Z.*—In the original draft of the bill the words were "southward to the banks of the River Ohio, westward to the banks of the Mississippi, and northward to the southern boundary." It is therefore probable that the amendment passed unperceived by those who drew the new Commissions; or the Commissions may have been engrossed from drafts made prior to the passing of the Act. In Lord Elgin's Commission, 1846, there is also a curious mistake. The western boundary of Lower Canada is made to extend to the shore of Hudson's Bay. I call it a mistake, for no account can be given of it at the Colonial Office; and by comparing it with the Proclamation of 1791, it will be observed that the alteration consists in using the word "shore" for the words "boundary line." It was not unnatural to say that the "shore" was the "boundary line" of Hudson's Bay.



*Note AA.*—I did not fail to notice the words “During His Majesty’s pleasure” in the Act of 1774. I take it these words, if more than deferential, cannot be extended, and therefore they would not give the King the power to add to the Province of Quebec. But at all events, he never attempted it, for extending the authority of the Governor to the Mississippi cannot be converted into an extension of the province to that line. Otherwise Lord Elgin’s commission would have extended Canada to the shore of Hudson’s Bay.

*Note BB.*—It has been attempted to throw some ridicule on the decision in the de Reinhard case, and it may therefore be worth mentioning that Chief Justice Sewell was probably the man at the time in Canada best fitted to preside in such a case, and that the Bar of Lower Canada could not then, or indeed at any other time, have been more brilliantly represented. The prisoner’s counsel, who desired to have the western boundary of Canada extended beyond the due north line from the confluence of the Ohio and Mississippi Rivers, were Andrew Stuart, the equal, if not superior, of his brother, the well-known Sir James Stuart, Vallieres de St. Réal, afterwards Chief Justice of the Queen’s Bench, Montreal, and Vanfelson, one of the first-named Judges of the Superior Court after its organization in 1849.

#### ADDITION TO NOTE Y.

Since my report was sent in, I have received a letter from the Abbé Verreau, now in London prosecuting historical investigations on behalf of the Government, enclosing a correspondence between General Haldimand and Sir Jeffrey Amherst, with respect to the limits of Canada alleged to have been traced by Mr. de Vaudreuil, on a map which he gave to General Haldimand, and which has not yet been found. The letters forming this correspondence were copied by the Abbé Verreau from the Haldimand papers in the British Museum.

The Abbé Verreau gives the following account of the work he has obligingly volunteered to perform: “J’ai tenu à copier cette lettre moi-même. Je n’ai trouvé que le projet de Haldimand, corrigé et raturé avec un soin qui montre l’importance attachée par lui à ce qu’il écrivait. C’est ce qui m’a engagé à copier les ratures; je les ai mises entre parenthèse. Il y a bien deux parenthèses de Haldimand, mais j’ai indiqué qu’elles sont de lui.”

LETTER FROM SIR JEFFREY AMHERST TO GENERAL HALDIMAND.

NEW YORK, 1st November, 1762.

DEAR SIR,—I have been twenty times at the point of writing to you on a subject which, though of no consequence, I should be glad to know the exact transactions that passed. When I made a report of Canada to the Secretary of State, I transmitted a copy of the part of the map where the limits between Canada and Louisiana were marked, which you delivered to me, and which I acquainted the Secretary of State were done by Monsieur de Vaudreuil. Whether by him, or done in his presence by his direction, comes to the same thing, and the thing itself is of no sort of consequence, as the letter and orders he (Monsieur de Vaudreuil) sent to the officers commanding at Michillimackinac, the Bay, Oocciatanou, Miamis, &c., mark out the boundaries and expressly include those posts in Canada, so that there can be no dispute about it; yet as I see some alteration has passed in England and France about Monsieur de Vaudreuil’s giving the boundaries, I should be glad to know of you whether he marked the map himself, or whether it was done in his presence, and what passed on that subject, that I may hereafter be able to say all that was done regarding the whole affair.

I am, with great truth, dear Sir,

Your most obedient humble servant,

JEFF. AMHERST.

" Copie véritable. La parenthèse est dans l'original. J'ai copié aussi bien que possible ce nom sauvage Oocciatonou. H. V.

LETTER FROM GENERAL HALDIMAND TO SIR JEFFREY AMHERST.

" TROIS RIVIÈRES, le 10 Xbre, 1762, }  
 " Fait partir le 16 do. }

" MONSIEUR,—J'ay reçu avec plaisir la lettre que V. Excellence me fait l'honneur  
 " de m'écrire du 1er Xbre à l'égard de ce qui s'est passé entre Mons. de Vaudreuil et  
 " moi au sujet des Limittes du Canada. Je m'étais proposé plusieurs fois de la  
 " prévenir; mais j'ay eû devoir attendre ces ordres auxquels je vais obéir avec toute  
 " l'exactitude possible.

" Environs 5 ou 6 jours après que je fus entré dans Mt. Real, je demanday à M.  
 " de Vaudreuil, s'il n'auroit point quelques Plans, Memoires ou Cartes instructives,  
 " concernant le Canada; que je le priois de vouloir me les remettre, afin que je pusse  
 " les faire tenir à V. Ex.; il me répondit qu'il n'en avait point les ayant toutes perdues  
 " à Québec (et pour evitter d'entendre l'enumeration qu'il vouloit me faire de ces autres  
 " pertes);\* je me contentay pour lors de cette réponse; mais ayant en occasion de  
 " lui en reparler quelques jour après, il me dit qu'il avait retrouvé une Couple  
 " de Cartes, et passant dans une autre Chambre, il fit apporter une grande Carte  
 " de l'Amerique Septile. faite à la main et ployée dans le couvert d'un atlas  
 " il y avait aussi quelques mauvais plans de forts, dans un rouleau détaché; ne  
 " trouvant rien d'instructif dans cette Carte, et me rappelant que je l'avoie vue imprimée  
 " j'appellay le Lt. Herring de Notre Batt. qui était dans la Salle et je la lui remis avec  
 " les autres papiers qu'il porta chez moi; En fin la matin du jour que Mons. de Vaudreuil  
 " partit,† (étant occupé à arranger le reste des papiers que j'avais reçus de différentes  
 " personnes) cette Carte me tombant sous la main me rappela les tentatives  
 " inutiles que j'avais faites auprès de lui et différentes personnes pour connaître  
 " l'étendue de ce Pays, et me fit naître l'idée de l'examiner avec M. de Vaudreuil.  
 " Je me rendis sur le champ chez lui en y faisant porter la carte par l'enseigne  
 " Monin, ayant trouvé M. de Vaudreuil dans sons cabinet qui donne sur la rue  
 " avec quelques personnes de sa maison (après lui avoir fait mon compliment)‡  
 " je le priay sans autre préambule de vouloir bien me montrer quelles étaient les  
 " Limittes (qui séparaient le) du Canada (de la Louisianne) et le conduisant vers  
 " la table qui était au fond du Cabinet, j'ouvris la Carte et après l'avoir un peu  
 " examinée, je réitéray ma demande; ill me parut fort surpris; et come il ne me répondait  
 " point, je pasay le doigt sur la rivière des Illinois en lui disant, Voicy les Illinois, alors  
 " il me répondit que les Illinois avaient été en contestation entre les deux Gouverneurs,  
 " mais qu'il avoit été descidé qu'ils dependroient de celui de la Louisianna, sur quoy  
 " sortant un crayon de ma poche et m'accoudant sur la Carte, M. de Vaudreuil se tenant  
 " debout auprès de moy (je marquay un point à la source des Illinois en lui montrant  
 " le nord, je lui demanday si la ligne passait là et m'ayant repondu que oui), je lui  
 " demanday en lui montrant le nord du Micéssépy si la ligne passait par là et m'ayant  
 " repondu que oui, je marquay de point depuis la source des Illinois en remontant le  
 " Micéssépy, et lui ayant demandé encore une foi si je marquois bien, il me répondit  
 " ces propres paroles (lui Monsr. le Marquis de Vaudreuil ayant les yeux fixés sur la  
 " Carte)§—*prenez tout le nord, prenez tout le nord*, alors je pointay jusques au Lac Rouge  
 " qui me parut la borne la plus naturelle, sans qu'il y eut la moindre objection de sa  
 " part, ensuite revenant de l'autre côté des Illinois; et ne me figurant pas que Loio  
 " put seulement estre misse en conteste, je lui dis, icy nous prenons sans doute par  
 " l'embouchure du Wabache, et posant mon crayon au confluent de Loio avec le  
 " Micéssépy, je tracay une ligne en remontant cette première rivière et l'Wabache qui

\* Cette Parenthèse est de Haldimand.—H. V.

† qui suit a été raturé par Haldimand. H. V.

‡ Effacé. H. V.

§ Parenthese de de Haldimand, H. V.



"alloit joindre la point que j'avois (marqué) commencé à la source des Illinois, M. de  
 "Vaudreuil toujours à cotté de moy, et regardant sur la carte, sans qu'il fit aucune  
 "objection (de quelle nature que ce puisse être). Cette ligne par ses différentes contours  
 "ne pouvant se faire à la dérobee (come un simple trait de crayon) lui en donnait  
 "cependant bien le temps; mais soit que'occupé de son départ il eut prononcé les oui  
 "indifféremment (ou supposant que ce que je faisais ne pouvait être d'aucune conséquence,  
 "il n'y eut pas) et sans y pretté tout l'attention qu'il aurait due (et ayant dit les oui  
 "trop à la légeré le récit (ou qu'en donnant une approbation tassitte il chercha à  
 "m'induire en erreur, le récit que je viens de vous faire, Mons. n'en et pas moins  
 "(exact) la plus exacte vérité. M. de Vaudreuil et tout ce qui restraît de François à  
 "Mont Réal devant parti ce(matin) jour là, les Compagnies de milices étant assemblées  
 "pour delivrer leurs armes, et pretter le serment de fidelité, je n'avois pas de temps  
 "à (perdre) donner à l'examen de cette Carte et dès que je crus comprendre ce qu'on  
 "entendoit sous le nom de Canada et que la ligne fût bien marquée, je refermay la  
 "Carte et la renvoyay chez moy par l'enseigne Monin, enfin Mons. vous pouvez être  
 "persuadé que la Carte que vous avez entre les mains, est la même que me fut remise  
 "par Mons. de Vaudreuil 8 ou 10 jours après la prise de Mont Réal, et que Lt. Herring  
 "qui je crois est à N. Yorcà (regut de ma main dan son Cabinet pour la porter) porta  
 "chez moi; que c'est cette même carte qui fut reportée par l'Enseigne Monin chez  
 "M. de Vaudreuil le matin de son départ; que lorsque je l'ouvris dans son Cabinet il  
 "n'y avoit ny lignes, ny points, ou rien qui put désigner des Limittes; que la ligne  
 "qui les marque aujourd'hui a été tracée par moy même entièrement sous les yeux  
 "de M. de Vaudreuil, et qui seul je me suis adressé, et que par tout ce qu'il m'a dit je  
 "n'ay jamais pu douter un instant, qu'il ne me donnât cette ligne pour les vraies  
 "Limittes du Canada, et que du moment que je fremay cette Carte dans son Cabinet,  
 "jusques à celui ou je la remis entre vos mains, il n'y a en aucuns altération faite à  
 "cette ligne de quelle nature que ce puisse être. Cecy, Mons, est sur ma parole la  
 "pure vérité de cette transaction.

"Je dois vous avouer aussi Mons. que me persuadant que vous demandiez plus  
 "tôt des intelligences (sur l'étendue d'un Pays, qui je crois n'a jamais eu de Limittes  
 "fixées)\* qu'un acte authentique faite en vertu de la Capitulation; je ne crus pas  
 "qu'il convint de faire signer la Carte par M. de Vaudreuil, ce qui m'eut été facile,  
 "de meme que de me faire donner les Limittes du Canada par écrit, ce qu'il n'aurait  
 "pu me refuser en vertu de la Capitulation et aurait rendu cet acte incontestable, au  
 "lieu que n'ayant point de signature à montrer, il pourra toujours faire croire à son  
 "party qu'on a cherché à le surprendre.

"Si j'ai mal compris V. Ex., j'en suis très fâché et lui en fait mes excuses, et  
 "lorsqu'en vous remettant la Carte je vous dis que les Limittes étaient tirées par M.  
 "de Vaudreuil; j'entendois qu'elles avoient été tirées sous ses propres yeux, et  
 "avoient eu son approbation; ce qui est vray à la letre.

"Je suis au reste bien charmé que (ce différent) cette vilaine chicane de M. de  
 "Vaudreuil, ne porte aucun préjudice aux affaires, elle même servira d'une bonne leçon  
 "dont je me souviendray si j'ay le bonheur de pouvoir la mettre un jour en pratique.

"J'ay l'honneur d'être avec un profond respect,

Monsieur, De Votre Excellence,

Le très humble et très obéissant serviteur,

FRED. HALDIMAND.

Du 10e Xbre.

"Vraie copie faite et relue par moi. J'ai marqué les parenthèses faites par  
 "Haldimand. Toutes les autres parenthèses indiquent des mots effacés dans  
 "l'original. H.V."

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\* Cette parenthèse est de Haldimand et n'est pas une rature. H.V.

## LETTER FROM SIR JEFFRY AMHERST TO GENERAL HALDIMAND.

NEW YORK, 25th January, 1763.

DEAR SIR:

\* \* \* "(Il parle de la cessation des hostilités et des forges de Ste. Maurice)"

I am much obliged to you for the particular and exact detail you have sent to me of what passed between yourself and Monsieur de Vaudreuil. It is almost precisely as I imagined. It is of no consequence whatever; but if it was, there could be none but good proceeding from what you did in that affair, which has my thorough approbation to every part of it.

"(Le reste de cette lettre se rapporte à d'autres affaires.)"

I am, with great truth, dear Sir,

Your most obedient humble servant,

JEFF. AMHERST.

From the correspondence it appears clear that the map was transmitted by Haldimand to Amherst, and that part of it—the part on which the limits were traced—was by the latter transmitted to the Secretary of State. This tends to support the suggestion that the map insisted on by Mr. Stanley was the one Gen. Haldimand got from M. de Vaudreuil. The points as marked by Haldimand seem to correspond with the description in the English answer to the French ultimatum, an extract of which will be found in note F, and the probable line of which I have suggested on the annexed map A 1, in green.

List of books and papers quoted and abbreviations used in referring to them:—

"Père Marest, *Lettres Edifiantes* vol. 6. Relation d'un voyage a la Baie d'Hudson en 1694, avec M. d'Iberville.

"Recueil de voyages du Nord, 10 vols., Nelle. Ed. 12 mo. Ce recueil a commencé en 1714 par le Libraire Jean Frederic Bernard et a été discontinué en 1731. Amsterdam 1732. Il contient un discours preliminaire très intéressant. Dans le troisième volume du recueil se trouve la Relation de la Baie de Hudson par M. Jérémie dont le véritable nom est Noel Jeremie Lamontagne. On trouve son ouvrage imprimé ailleurs.

"Lettre de la vénérable Mère Marie de l'Incarnation, Première Supérieure des Ursulines de la Nouvelle France. 4to. Paris, 1631.

"Relations des Jésuites. 3 vols., 8vo. Quebec, 1838.

"Journal des Jésuites. 1 vol., 4to. Quebec.

"Histoire de l'Amérique Septentrionale. Par de Bacqueville de La Potherie. 4 vols., 8vo. Paris, 1722.

"Historia Antipodum. Johann Ludwig Gottfriedt. Frankfort, 1655.

"Denis, description des costes de l'Amérique Septentrionale. 2 vols. Paris, 1672.

"L'Escarbot, Marc. Histoire de la Nouvelle France. 12mo. Paris, 1609.

"Père Charlevoix Histoire et description de la Nouvelle France. 2 vols., 4to. Paris, 1744."

Shea. John Gilmary, Translation of the above with notes. 6 vols., 8vo. New York, 1866-72.

"Journal d'un voyage fait par ordre du roi dans l'Amérique Septentrionale, forme les volumes 5 et 6 de l'histoire de la Nouvelle France.

"Beilin, Remarques sur la Carte de l'Amérique Septentrionale, comprise entre le 28e et le 72e degré de Latitude, avec une description géographique de ces parties. 4to. Paris 1755."

Purchas, Samuel, His Pilgrimage. Folio. London, 1617.

Oldmixon, J., The British Empire in America. 2 vols., 8vo. London, 1741.

Dobbs, Arthur. Of Countries adjoining to Hudson's Bay. 4to. London, 1744.

Hakluyt Society's Publications. London.

Ogilby, John. America: Being the Description of the New World. 2 vols., folio. London, 1671.



Carver, Jonathan. Travels through the Interior Parts of North America, in 1766, 1767 and 1768. Illustrated with copper plates, colored. 8vo. London, 1781.

Harris' Complete Collection of Voyages and Travels. 2 vols., folio.

Murray, Hugh. Historical Account of Discoveries and Travels in North America, including the United States, Canada, the Shores of the Polar Sea, and the Voyage in Search of the North-West Passage, with Observations on Emigration. 2 vols., 8vo. London, 1829.

Bolingbroke's Letters and Correspondence. 4 vols., 8vo. London, 1798.

Chalmer's Collection of Treaties. 2 vols. London, 1790.

"Garden, M. le Comte de, Histoire Générale des Traités de paix entre les puissances de l'Europe. 15 vols., 8vo. Paris, 1817-18."

Douglas', Dr. W., Summary - Historical and Political—of the First Planting, &c., of the British Settlements in America. 2 vols., 8vo. 1755.

Christie, Robert, A History of the late Province of Lower Canada. 6 vols., 8vo. Quebec, 1849-55.

"Ferland, L'Abbé, Cours d'Histoire du Canada, en deux parties. Quebec, 1861-7."

Cavendish, Sir Henry, Bt. Debates in the House of Commons in the year 1774, on the Bill for making more effectual provision for the Government of the Province of Quebec. London, 1839.

Documents relative to the Colonial History of the State of New York, procured in Holland, England and France, by John Romeyn Broadhead, Esq., Agent of the State. Published under an Act of the Legislature and edited by E. B. O'Callaghan, M.D., L.L.D., with a second introduction by the Agent. 10 vols., 4to. Albany, 1853-8. Doc. Hist.

Historical Documents relating to Canada and the English Colonies in America, from the London Archives. 6 vols. M.S. Eng. M.S.

Papers the property of John Pownall, Esq. (brother of Governor Pownall), when Secretary of the Board of Trade. After his death, in 1795, they passed into the hands of his son, Sir George Pownall, who was Secretary of the Province of Lower Canada until 1805. Sir George presented the volumes to the late Hon. H. W. Ryland, Secretary to the Governor General, who gave them to his son, G. F. Ryland, Esq., from whom they were purchased by the Library of Parliament. 7 vols., M.S. Pownall Papers.

"Manuscripts relatifs à l'Histoire de la Nouvelle France. Trois Séries. 1ère "Serie 17 vols., in folio, se trouve déposée à la Bibliothèque de la Société Littéraire "et Historique de Québec. 2ième Serie, 11 volumes, déposée dans la Bibliothèque du "Parlement. 3ième Serie, 12 vols., déposée dans la Bibliothèque du Parlement. "Paris, M.S.

"Doutre, Gonzalve, B.C.L., et Edmond Lareau, L.L.B. Droit Civil Canadien "suivant l'ordre établie par les Code, précède d'une histoire générale du droit "Canadien.

"Garneau, F. X., Histoire du Canada depuis sa decouverte jusqu'à nos jours. "4 vols., 8vo. Quebec, 1845, 1846, 1848, 1852."

Memorandum. Remarks submitted by the Commissioner of Crown Lands on the North-West Territories of Canada, Hudson's Bay, the Indian Territories, and the questions of Boundary and Jurisdiction connected therewith, to accompany certain other documents in Return to an Address of the Honorable Legislative Assembly of Canada. 1857. App. (No. 17) (B). Cited as Mr. Cauchon's Report in 1857.

Correspondence between the Dominion Government and the Government of the Province of Ontario, sent down in Return to an Address of the Legislature of that Province in 1872.

Foot notes are indicated thus: (1) (2) (3), &c.

Notes at the end of the Report are indicated thus: "Note A," &c.

The Maps in the Report are referred to thus: A1, A2, A3, A4.

4.—STATEMENT OF THE CASE OF THE GOVERNMENT OF THE DOMINION OF CANADA REGARDING THE BOUNDARIES OF THE PROVINCE OF ONTARIO. PREPARED BY HUGH MACMAHON, Q.C., COUNSEL FOR THE DOMINION.

ABBREVIATIONS.

Ont. Docts.

Statutes, Documents and Papers respecting the Northern and Western Boundaries of Ontario, compiled by direction of the Government of Ontario.

Mills.

Revised Report for the purpose of the Arbitration between the Dominion of Canada and Province of Ontario, by David Mills, Esq., M.P.

Papers relating to H. B. Co. presented to House of Commons.

Papers presented by command of Her Majesty to the House of Commons in pursuance of an Address respecting the Territory, Trade, Taxation and Government claimed or exercised by the Hudson's Bay Company. (Ordered by House of Commons to be printed, 12th July, 1850.)

STATEMENT OF THE CASE OF THE GOVERNMENT OF THE DOMINION OF CANADA REGARDING THE BOUNDARIES OF THE PROVINCE OF ONTARIO.

The limits assigned to the Province of Ontario by the British North America Act, 1867, Sec. 6, are such part of the Province of Canada as at the passage of the Act formerly constituted the Province of Upper Canada.

The claim of the Dominion of Canada is, that the meridional line drawn due north from the junction of the Ohio and Mississippi Rivers (ascertained to be  $89^{\circ} 9' 27''$  west) forms the western boundary of Ontario, and that the land's height of the northern water-shed of the St. Lawrence is the northern boundary.

The Government of Ontario contend that the western limit of that Province is the Rocky Mountains; that the north-western liminary line lies north of the Saskatchewan; and that the north-eastern line lies in the vicinity of Hudson's Bay. (Mills, p. 1.)

The claim of Ontario to extend the western limit of the Province to the Rocky Mountains rests, it is assumed, upon the supposed title of France to that country, as having been the first discoverers thereof. It was stated by M. de Callières, when writing to M. de Seignelay in 1685 (N.Y. His. Doc., Vol. IX., p. 265), that the French were the first to discover Hudson's Bay, and that nation was therefore entitled to the whole country to the base of the Rocky Mountains; and the rule of international law on which this is claimed is thus stated by M. de Callières: "It is a custom established and a right recognized by all Christian nations that the first who discovers an unknown country not inhabited by Europeans, and who plant in it the arms of their prince, secure the property thereof to that prince in whose name they have taken possession of it."

L'Escarbot, in 1617, stated that "New France has for its limits on the western side the lands as far as the sea called the Pacific, on this side the Tropic of Cancer; on the south the islands of the Atlantic Sea, in the direction of Cuba and the Island of Hispaniola; on the east by the Northern Sea, which bathes New France; and on the north that land called 'Unknown' towards the icy sea as far as the Arctic Pole." (Ont. Docts., p. 53.) So that the whole of the north-western portion of the continent was claimed as belonging to France.

It will be necessary briefly to show upon what these claims are founded; and then to consider if they have any value as bearing on the question to be decided by the arbitrators.

In 1626, Louis XIII, granted to the Company of New France a charter which, it is asserted, included the whole of the country about Hudson Bay and west of it.



The Indians from the vicinity of Hudson's Bay came to Montreal to trade; hence it is said there was no necessity for erecting forts and trading posts. (Mills, p. 127.)

It is stated that Jean Bourdon, the Attorney-General in 1656, explored the entire coast of Labrador and entered Hudson's Bay.

It appears that in the year 1656 there was an order of the Sovereign Council of Quebec authorizing Sieur Bourdon, its Attorney-General, to make a *discovery* thereof.

There is no record whatever of his having attempted to make the discovery in the same year in which the order was passed by the Council. There is a record however, of his having made the attempt in the year following (1657), and he may then have designed carrying out the order. He sailed on the 2nd day of May and returned on 11th August, 1657; and it is not pretended that he could have made a voyage to Hudson's Bay and return between these dates. (Journal des Jesuites pp. 209-218.) As to the extent of this voyage there can be no doubt, as in the Rel. de Jests., Vol. III., Rel. 1658, p. 9, it is thus reported:—

“Le 11 (August) parut la barque de Monsieur Bourdon lequel estant descendu sur le grand fleuve du Costé du Nord voyagea jusques au 55 degré au il rencontra un grand banc de glace qui le fit remonter aiant perdu deux Hurons qu'il avait pris pour guides. Les Esquimaux sauvages du Nord les massacrèrent et blessèrent un François de trois coups de flèches et d'un coup de couteau.”

The Jesuits would have known if Jean Bourdon had entered the Straits of Hudson, and would have mentioned it in their Relations. On the contrary, they never mention it, and it is to be taken from that, that the assertion that he ever entered Hudson's Bay is a myth, because he was of the Province of Quebec, and was a man well known and trusted by the Jesuits, and went with Father Jaques on an embassy to Governor Dongan, of New York.

It is asserted that Father Dablon and Sieur de Valliere were in 1661 ordered by Sieur d'Argenson, Governor of Canada, to proceed to the country about Hudson's Bay, and they went thither accordingly, and the Indians who then came back with them to Quebec declared that they had never seen any Europeans there before.

In Shea's Charlevoix, Vol. III., pp. 39 and 40, it is stated that he (Father Dablon) attempted to penetrate to the Northern Ocean by ascending the Saguenay. Early in July, two months after they set out, they found themselves at the head of the Nekauba River, 300 miles from Lake St. John. They could not proceed any further, being warned by the approach of the Iroquois.

Rev. Claude Dablon arrived in Canada in 1655, and was immediately sent missionary to Onondaga, where he continued with a brief interval until 1658. In 1661 he set out overland for Hudson's Bay, but succeeded in reaching only the head waters of the Nekauba, 300 miles from Lake St. John. (N. Y. Hist. Doc., Vol. IX., p. 97, note 2.—*Ed.*)

In the *Rel. de Jésums*, Vol. III (1661), p. 13, there is an account of this voyage, which is called “*Journal du premier voyage fait vers la mer du Nord*. (12 Août, 1661.)” The account is dated from the highest point they reached, Nekauba, 100 lieues de Tadousac, 2 Juillet, 1661:

“1661 Juillet le 27 retournerent ceux qui estoient allés ou pretendoient aller à la mer du Nord au Kiristinons P. Dablon &c.” (Journal de Jésums, p. 300.)

An assertion is made that some Indians came from about Hudson's Bay to Quebec in 1663, and that Sieur la Coutuure with five men proceeded overland to the Bay possessions, whereof they took in the King's name.

There is no record of this voyage. No mention is made in Charlevoix or in the Relations of the Jesuits respecting Coutuure or his expedition.

Sieur Duquet, King's Attorney for Quebec, and Jean L'Anglois, a Canadian colonist, are said to have gone to Hudson's Bay in 1663 by order of Sieur D'Argenson and renewed the act of taking possession by setting up the King's arms there a second time.

Viscount D'Argenson, who is stated by Mr. Mills at p. 129 of his Revised Report to have given the order to Duquet to proceed to Hudson's Bay, left Canada on 16th September, 1661, two years prior to the giving of the order, which, it is stated, Sieur

Duquet received (Shea's *Charlevoix*, Vol. III., p. 65, note 5 and p. 17. N.Y. Hist. Doc'ts, Vol. IX., p. 17.)

In 1666 or 1667, Radisson and des Grosellières were roaming among the Assiniboines in the region of Lake Winnipeg, and were conducted by members of that tribe to the shores of Hudson's Bay. (Mills, p. 8)

Father Albanel and Sieur St. Simon were, in November, 1671, sent by M. Talon to Hudson's Bay, which they reached in 1672.

In the *Relations* of the Jesuits, Albanel gives an account of his trip, and shows that the English Company were already in possession of Hudson's Bay, having entered there under their charter.

It is quite apparent from the *Relations* that no one had on behalf of France visited Hudson's Bay prior to his visit in 1672. Father Albanel says:--

"Jusques icy on avoit estimé ce voyage impossible aux François, qui apres l' avoir entrepris déjà par trois fois, et n'en ayant pû vaincre les obstacles, s'estoient veu obligez de l'abandonner dans le desespoir du succez. Ce qui paroist impossible, se trouve aisé quand il plaist à Dieu. La conduite m'en estoit deuë, apres dix-huit ans de poursuites que j'en avois faite, et j'avois des preuves assez sensibles que Dieu m'en reservoit l'exécution, après la faveur insigne d'une guersion soudaine et marveilleuse, pour ne point dire miraculeuse, que je receus des que je me fus devoué à cette mission, à la sollicitation de mon Superieur." (Rel. Jests. 1672, p. 56.)

Up to this time (1672) the Jesuits do not appear to have heard of any prior expedition having reached Hudson's Bay.

What is relied upon by the Province of Ontario as furnishing evidence of Father Dablon and Sieur Couture having visited Hudson's Bay is a memoir of M. de Callières sent to the Marquis de Seiguelay in 1684 (N.Y. Hist. Doc't., Vol. IX., p. 268), and M. de Denonville, on the 8th Nov., 1686, by a memoir sent to M. de Seiguelay, appears to have copied the statement made by M. de Callières. (See *ibid*, p. 304.) But in his letter which accompanies the memoir, M. de Denonville says: "I annex to this letter a memoir of our rights to the entire of that country of which our registers ought to be full, but no memorials of them are to be found." (N. Y. Hist. Doc't., Vol. IX., p. 297.) M. de Denonville thereby admits that documentary evidence could not even at that time be adduced in support of these visits having been made to Hudson's Bay.

At the time that M. de Callières and M. de Denonville wrote (in 1684 and 1686) it was most important to show if possible that Dablon and Couture had been at Hudson's Bay. The French, before that time, had driven the English from a number of their forts; and in March, 1686, Canadian troops were sent by Denonville who surprised and captured Forts Albany, Hayes and Rupert, belonging to the Hudson's Bay Company; and it therefore became necessary to show a color of right for these proceedings, and these memoirs were prepared with that view.

## ENGLISH DISCOVERY.

1517.

Sebastian Cabot, who sailed to Hudson's Bay and Straits under a commission from Henry VII. of England, entered the Bay, which, in 1610, took the name of Hudson. This is admitted by Mr. Mills, pp. 122 and 123. (See Bacon's *History* of Henry VII. Hakluyt, Vol. III, pp. 25, 26 and 27.)

1576, 1577 and 1578.

Sir Martin Frobisher, it is said, made three voyages to Hudson's Bay. He entered Hudson's Bay in 1576, and gave the name Frobisher's Straits. (Mills, p. 23. Hakluyt, Vol. III, pp. 55 to 95. Pinkerton's *Collection*, Vol. XII., pp. 490-521.)

1608-1610.

According to the narrative of Prickett (who was with Hudson during the voyage), to be found in Harris's *Voyages*, Vol. II., pp. 243-4, Hudson sailed on 17th



April, 1610, reached the Bay now known as "Hudson's" in July of that year, and wintered in the Bay, and remained there until late in the summer of 1611.

1611.

It was desired to prosecute the discoveries made by Hudson, and in 1611 His Royal Highness Henry Prince of Wales was applied to by persons concerned in the project, and he resolved to send Captain Batson, who penetrated to Hudson's Bay and sailed 200 leagues to the North-West. He wintered there at Nelson River. (Harris, Vol. II., pp. 245-404.)

1631.

It appears that the English nation had been trading with Greenland, and those trading finding that "other nations were interfering with this trade" found themselves under the necessity of having recourse to the Crown for protection and assistance, as well for defending their fisheries as for prosecuting their discoveries, and they accordingly addressed themselves to King Charles I., who furnished them with a frigate called "The Charles," under command of Captain Luke Fox, who sailed in the spring of 1631, in order to make discoveries towards the North-West. Captain Fox and Captain James met at Fort Nelson in August, 1631.

Capt. Thomas James undertook his voyage in 1631 for the satisfaction of Charles I. at the expense of the merchants of Bristol. The account of the voyage was written by himself and published in 1633. Captain James left England in May and met Captain Luke Fox on 29th August near Port Nelson. He wintered in Hudson's Bay. (Harris's Travels, Vol. II., pp. 407, 409 and 413.)

1667 and 1668.

Des Grosellières and Radisson (who it is supposed were *Coueurs des bois*) were roaming among the Assinniboines and were conducted by them to Hudson's Bay.

Des Grosellières and Radisson went to Quebec for the purpose of inducing the merchants there to conduct trading vessels to Hudson's Bay. The proposal was rejected, as the project was looked upon as chimerical by the Quebec merchants. (Ont. Docs. p. 280). (This does not accord with the pretensions of the French that Jean Bourdon had made a voyage there in 1656 or 1657).

Des Grosellières was in London in 1657, and before going there had been in Boston and Paris in search of persons willing to fit out an expedition to explore Hudson's Bay. He met with a favorable reception, and the London Merchants employed Z. Gillam, a person long used to the New England trade, to perfect this discovery. Gillam sailed in the "Nonsuch" in 1667, and on his arrival built Port Charles, said to have been the first fort erected in the bay, and upon his return those engaged in the enterprise applied to Charles II. for a patent, which was issued on 2nd May, 1670, to Prince Rupert and others. (Harris's Voyages, Vol. II., p. 286).

1669.

Captain Newland was sent out in 1669 by the same parties who in 1667 sent out Z. Gillam.

As far as Hudson's Bay territory is concerned the English were first, both as to discovery and occupation. So long as the English were not there the Indians came to Montreal and Quebec, and the French derived the benefit of the trade, which was all that was required, and they could then afford to treat as chimerical the statements of Radisson and Des Grosellières that Hudson's Bay could be reached with ships. But once the English occupied the territory, erected forts and created settlements, whereby the French fur trade was cut off from the west and north, then it became necessary for them to claim title by discovery. Hence the memoir of M. de Callières to M. Seiguey, which is shown cannot be relied upon, and which D. Denonville says there are no memorials to support.

If possession is to form a claim to the country, the evidence that the English first made a settlement and thus took possession is of the clearest character, for it is

not seriously pretended that any actual possession was taken nor any settlement made until Gillam went to Hudson's Bay and built Fort Charles in 1667.

What, then, did England obtain by taking possession and making a settlement for the purpose of occupancy by building the numerous forts on Hudson's Bay in the year 1667 and during subsequent years? According to Vattel, Book I., Chap. 18., Sect. 207, "Navigators going on voyages of discovery furnished with a commission from their Sovereign, and meeting with islands or other lands in a desert state, have taken possession of them in the name of their nation; and this title has been usually respected, provided it was soon after followed by real possession."

"When a nation takes possession of a country, with a view to settle there, it takes possession of everything included in it, as lands, lakes, rivers, &c." (Ibid., Chap. 22, Sect. 226.)

"In the negotiation between Spain and the United States respecting the western boundary of Louisiana, the latter country laid down with accuracy and clearness certain propositions of law upon this subject, and which fortify the opinion advanced in the foregoing paragraphs. 'The principles (America said on this occasion) which are applicable to the case are such as are dictated by reason and have been adopted in practice by European powers in the discoveries and acquisitions which they have respectively made in the New World. They are few, simple, intelligible, and, at the same time, founded in strict justice. The first of these is, that when any European nation takes possession of any extent of sea coast, that possession is understood as extending into the interior country to the sources of the rivers emptying within that coast, to all their branches, and the country they cover, and to give it a right, in exclusion of all other nations, to the same. (See Memoire de l'Amerique, p. 116.) It is evident that some rule or principle must govern the rights of European powers in regard to each other in all such cases; and it is certain that none can be adopted, in those to which it applies, more reasonable or just than the present one. Many weighty considerations show the propriety of it. Nature seems to have destined a range of territory so described for the same society to have connected its several parts together by the ties of a common interest, and to have detached them from others. If this principle is departed from it must be by attaching to such discovery and possession a more enlarged or contracted scope of acquisition; but a slight attention to the subject will demonstrate the absurdity of either. The latter would be to restrict the rights of an European power who discovered and took possession of a new country to the spot on which its troops or settlement rested—a doctrine which has been totally disclaimed by all the powers who made discoveries and acquired possessions in America.' (Phillimore's Intl. Law, 2 ed., Vol. I., pp. 277-8-9.)

Sir Francis Twiss, in his discussion on the Oregon question, at page 300 states that "Great Britain never considered her right of occupancy up to the Rocky Mountains to rest upon the fact of her having established factories on the shores of the Bay of Hudson, *i.e.*, upon her title by mere settlement, but upon her title by discovery confirmed by settlements in which the French nation, her only civilized neighbor, acquiesced, and which they subsequently recognized by treaty."

Discovery confirmed by settlements in which the French nation, her only civilized neighbor, acquiesced, and which they subsequently recognized by treaty."

The British nation, therefore, acquired, by discovery and by settlements made on Hudson's Bay, the possession of the country extending into the interior to the sources of the rivers emptying within that coast, which would include the Saskatchewan and English Rivers to the west, having their sources at the foot of the Rocky Mountains, and extending south and east to the sources of all the rivers flowing into James' Bay.

The law entitling England to this has been stated not only by Vattel, but has been adopted as correct by the United States, and is recognized by the highest authorities on International Law in England—Dr. Twiss and Dr. Phillimore—as being the correct principle to apply in such cases.



If England acquired the territory claimed within the limits stated, it may for some purposes be necessary to consider what the Hudson's Bay Company took under their charter. The charter will be found in Ont. Docts. pp. 29-37, and at p. 33 will be found what the King grants to the Hudson's Bay Company, under the name of "Rupert's Land." First is granted the sole trade and commerce of all those seas, bays, lakes, rivers, creeks, &c. Then the company are created the absolute lords and proprietors of the same territory, limits and places, &c., &c., in free and common socage," with power to erect colonies and plantations, &c.

The charter is very wide; and, although it appears to have been conceded by the leading counsel in England (Ont. Docts., pp. 193 to 202), whose opinions were obtained that the charter granting a monopoly to the Company to trade may have been void because not sanctioned by Parliament, yet that the territorial grant is valid, and the only difference in the opinions appears to be to the extent of territory covered by the grant.

In 1849, on an Address of the House of Commons, praying that Her Majesty would be graciously pleased to direct that means be taken to ascertain the legality of the powers in respect to *Territory, Trade, Taxation and Government*, which are or have been claimed by the Hudson's Bay Company, the Directors of the Company were requested to render their assistance in complying with the Address of the House of Commons, which they did on the 13th September, 1849, by enclosing to Earl Gray a statement as to their *Rights as to Territory, Trade, &c.*, which will be found in full in Ont. Docts., pp. 288-9 and 290.

Annexed to this statement was a map showing the territory claimed by the Company as included within their charter; and a copy of this map was likewise produced in 1857 to the Select Committee of the House of Commons and is attached to the Report of that Committee. This map shows that on the south the Company claimed to the land's height, and on the west to the foot of the Rocky Mountains.

On 30th October, 1849, Earl Gray enclosed to the then law-officers of the Crown the statement and map furnished by the Company, requesting an opinion as to the rights of the Company.

The opinion furnished is as follows:—

*Copy of a Letter from Sir John Jervis and Sir John Romilly to Earl Gray.*

TEMPLE, January, 1850.

MY LORD,—We were honored with Your Lordship's commands, contained in Mr. Hawes' letter of the 30th October last, in which he stated that he was directed by Your Lordship to transmit to us a copy of a Resolution of the House of Commons, that an Address be presented to Her Majesty, praying that measures may be taken for ascertaining the legality of the powers which are claimed or exercised by the Hudson's Bay Company on the Continent of North America.

Mr. Hawes then stated that he was to enclose the copy of a letter from the Chairman of the Hudson's Bay Company, together with a statement and map, prepared under his direction, of the territories claimed by the Company in virtue of the charter granted to them by King Charles the Second.

Mr. Hawes also sent the copy of a letter dated the 30th September last, from Mr. A. K. Isbister, inquiring in what mode Her Majesty's Government intend to give effect to the Resolution of the House of Commons, and whether, in the event of any reference to a judicial tribunal, it will be necessary for the parties interested to appear by counsel or otherwise, or to furnish evidence, and, if so, of what nature.

Mr. Hawes concluded by stating that your Lordship requested that we would take these papers into our early consideration and inform you whether we are of opinion that the rights claimed by the Company do properly belong to them. In the event of our entertaining a doubt on any point raised in these papers, Mr. Hawes was to request that we would advise your Lordship in what manner the opinion of a competent tribunal can be obtained on the subject.

In obedience to your Lordship's command, we have taken these papers into our consideration, and have the honor to report that, having regard to the powers in respect to territory, trade, taxation and government claimed by the Hudson's Bay Company in the statements furnished to your Lordship by the Chairman of that Company, we are of opinion that the rights so claimed by the Company do properly belong to them.

Upon this subject we entertain no doubt; but as it will be more satisfactory to the complainants against the Company, to the promoters of the discussion in the House of Commons, and possibly to the Company themselves, if the questions are publicly argued and solemnly decided, we humbly advise your Lordship to refer these questions to a competent tribunal for consideration and decision, and to inform Mr. Isbister that he may appear as complainant, and the Company that they may be heard as respondents upon the argument. The proper mode of raising the question for discussion will, we presume, be for Mr. Isbister, or some other person, to embody in a petition to Her Majesty the complaints urged against the Hudson's Bay Company; and such a petition may be referred by Her Majesty either to the Judiciary Committee, under the 4th Section of the Statute 3 and 4, Will. IV., c. 41, or to the Committee of Trade, as involving questions within their jurisdiction. The Judicial Committee, from its constitution, is the best fitted for the discussion of a case of this description, and we recommend that to that tribunal the proposed petition should be referred.

(Papers relating to Hudson's Bay Company, presented to the House of Commons, pp. 7-8.)

On 6th June, 1850, Earl Grey caused to be sent to Sir John Pelly a letter, from which the following extracts are taken:—

EXTRACT OF A LETTER FROM B. HAWES, ESQ., TO SIR JOHN PELLY, BART., DATED AT DOWNING STREET, 6TH JUNE, 1850.

"With reference to your observation, 'that it would be of the utmost importance if the decision of the Privy Council on the rights and privileges of the Company were sent to Hudson's Bay by one of the ships appointed to sail on the 8th instant,' I am to remind you that the proceedings for the purpose of giving effect to the resolution of the House of Commons of 5th July, 1849, have not led to any reference to the Privy Council, and that the question raised in that resolution stands in the following position:—

"Steps have been taken, as you are aware, to obtain from the Hudson's Bay Company a statement of its claims; that statement was duly submitted to Her Majesty's law advisers, and Her Majesty's Government received from them a report that the claims of the Company were well founded. It was observed in that report that, with a view to the fuller satisfaction of the House of Commons, and the parties interested, it would be advisable to refer the enquiry to a competent tribunal, and that the proper method of raising a discussion upon it would be for some person to address a petition to Her Majesty, which petition might then be referred either to the Judicial Committee or the Committee of Privy Council for Trade and Plantations.

"Such a petition was, therefore, essential to the complete prosecution of the enquiry. Lord Grey accordingly gave to certain parties in this country, who had taken an interest in the condition of the inhabitants of the Hudson's Bay Company's Territories, and had questioned the validity of the Company's charter, an opportunity to prefer the necessary petition if they were so disposed; but, for reasons which it is unnecessary to repeat, they respectively declined to do so. Lord Grey having, therefore, on behalf of Her Majesty's Government, adopted the most effectual means open to him for answering the requirements of the Address, has been obliged, in the absence of any parties prepared to contest the rights claimed by the Company, to assume the opinion of the law officers of the Crown in their favor to be well founded."



(Papers relating to Hudson's Bay Company, presented to House of Commons, p. 15.)

The law officers of the Crown—Sir Richard Bethell, Attorney-General, and Sir Henry S. Keating, Solicitor-General—gave an opinion in 1857 (Ont. Docts., pp. 200-1), "That the validity and construction of the Hudson's Bay Company's charter cannot be considered apart from the enjoyment which has been had under it during nearly two centuries, and the recognition made of the rights of the Company in various Acts both of the Government and the Legislature."

"We beg leave to state, in answer to the questions submitted to us, that in our opinion the Crown could not now with justice raise the question of the general validity of the charter; but that, on every legal principle, the Company's territorial ownership of the lands and the rights necessarily incidental thereto (as, for example, the right of excluding from their territory persons acting in violation to their regulations) ought to be deemed to be valid."

"The remaining subject for consideration is the question of the geographical extent of the territory granted by the charter, and whether its boundaries can in any and what manner be ascertained. In the case of grants of considerable age, such as this charter, when the words, as is often the case, are indefinite or ambiguous, the rule is that they are construed by usage and enjoyment, including in these latter terms the assertion of ownership by the Company on important public occasions, such as *Treaties of Ryswick and Utrecht, and again in 1750.*"

Now, what were the Hudson's Bay Company claiming as their territorial rights at the time of the Treaty of Ryswick (1697) and after the Treaty of Utrecht (1713), and also in 1750?

By the 7th and 8th Articles of the Treaty of Ryswick certain things were to be done—(1) the Treaty was to be ratified, and (2) after the ratification Commissioners were to be appointed who were "to examine and determine the rights and pretensions which either of the said Kings had to the places situate in Hudson's Bay." (Ont. Docts., pp. 15 and 16.) And although Commissioners were appointed, and although claims were at different times advanced by the Hudson's Bay Company (as will presently be stated), nothing was done by the Commissioners to determine such rights and pretensions.

"After the Commissioners have determined those differences and disputes, the Articles the said Commissioners shall agree to shall be ratified by both Kings, and shall have the same force and vigor as if they were inserted word for word in the present Treaty." (Treaty of Ryswick, Art. 8, Chalmers' Treaties, Vol. I, p. 335.)

The English and French Governments went on negotiating under the Treaty, until 1702, when the war of succession broke out and all negotiations were at an end.

It has been stated and urged as a ground against the latter pretensions of the Hudson's Bay Co., that in July, 1700, they were willing to contract their limits. While willing to do this for the purpose of effecting a settlement, and only on condition of their not being able to obtain "the whole Straits and Bay which of right belongs to them." (Ont. Docts., p. 123.)

Nothing was done under this, and the Hudson's Bay Co. were again addressed by the Lords of Trade and Plantations in January, 1701, when they again insist on their rights to the whole Bay and Straits, but are willing to forgo their rights to a certain extent if by that means they can secure a settlement. "But should the French refuse the limits now proposed by the Company, the Company think themselves not bound by this, or any former concessions of the like nature, but must, as they have always done, insist upon their prior and undoubted right to the whole Bay and Straits of Hudson which the French never yet would strictly dispute, or suffer to be examined into (as knowing the weakness of their claim), though the first step in the said Article of Ryswick directs the doing of it." (Ont. Docts., pp. 124-5).

In May, 1709, the Company were requested by the Lords of Trade and Plantation to send an account of the encroachments of the French on Her Majesty's Dominion in America within the limits of the Company's charter. To which the

Company replied, setting forth their right and title, and praying restitution. (Mills, pp. 152-3.)

A further petition was sent by the Hudson's Bay Company to the Queen in 1771. (Ont. Docts., pp. 126-7.)

Nothing was done by the Commissioners towards the determination of the differences and disputes up to the time when Count de Torey, on behalf of France, made a proposition, in April, 1711, with a view of bringing about a general peace between England and France, and while these negotiations were in progress, and on 7th February, 1712, the Hudson's Bay Co. set forth what they desired should be stipulated for them at the ensuing treaty of peace. (Ont. Docts., pp. 128-9.)

For reasons thought very cogent, it is not supposed the question of *post liminij* will require much, if any, consideration; but as no point should be overlooked which ought, or even might, be considered in the case, the subject is, therefore, shortly considered.

Vattel, Book III., Cap. 14, Sec. 20, defines the right of *post liminij* to be "that in virtue of which persons and things taken by the enemy are restored to their former estate on coming again into the power of the nation to which they belonged."

"The Sovereign is bound to protect the persons and property of his subjects, and to defend them against the enemy. When, therefore, a subject, or any part of his property, has fallen into the enemy's possession, should any fortunate event bring them back again into the Sovereign's power, it is undoubtedly his duty to restore them to their former condition—to re-establish the persons in all their rights and obligations—to give back the effects to the owners—in a word, to replace everything on the same footing on which it stood previous to the enemy's capture. (Ibid, Sec. 205.)

"Provinces, towns and lands, which the enemy restores by the treaty of peace are certainly entitled to the right of *post liminium*; for the Sovereign, in whatever manner he recovers them, is bound to restore them to their former condition as soon as he regains possession of them. (Ibid, Sec. 205.) The enemy in giving back a town at the peace renounces the right he had acquired by arms. It is just the same as if he had never taken it; and the transaction furnishes no reason which can justify the Sovereign in refusing to reinstate such town in the possession of all her rights, and restore her to her former condition." (Ibid, Sec. 214.)

It is submitted, however, that, as between the Dominion and Province of Ontario, the question whether the Hudson's Bay Company were entitled to demand the right of *post liminium* is of no consequence whatever.

The late Chief Justice Draper, when acting as agent for the Province of Canada, delivered to the House of Commons Committee, on the 28th of May, 1857, a paper relative to the boundaries, wherein it is stated,

"The 8th Article of the Treaty of Ryswick, shows that the French at that time set up a claim of right to Hudson's Bay, though that claim was abandoned at the peace of Utrecht, and was never set up afterwards." (Ont. Docts., p. 240.)

Lord Dartmouth's letter of the 27th May, 1713 (Ont. Docts., p. 129), enclosing the petition of the Hudson's Bay Company, shows what was the design in not accepting an "Act of Cession" from the French King; and Her Majesty the Queen "insisted only upon an order from the French Court for delivering possession; by this means the title of the Company is acknowledged, and they will come into the immediate enjoyment of their property without further trouble."

The Sections of Treaty of Utrecht having any bearing upon the question are the 10th and 15th, to be found in Ont. Docts., pp. 16 and 17.

Under Sec. 10 the King of France was "to restore to the Queen of Great Britain, to be possessed in full right forever, the Bay a Straits of Hudson, together with all lands, seas, coasts, rivers and places situate in the said Bay and Straits, and which belong thereunto; no tracts of land or of sea being excepted which are at present possessed by the subjects of France."

\* \* \*



"The same Commissaries shall also have orders to describe and settle in like manner the boundaries between the *other* British and French Colonies in those parts."

In the wording of the 10th Article a great deal of discussion arose as to whether the word "restore" or the word "cede" should be used. Count de Torey, in January, 1713, says: "The Plenipotentiaries now make no difference between places 'ceded' and places 'restored.'" (Bolingbroke's Correspondence, Vol. III., p. 601.) But in March, 1713, he says that the truth is so evident that the Plenipotentiaries of Great Britain at Utrecht always make a distinction between places that should be "ceded" and those that should be "restored." (Bolingbroke's Correspondence, Vol. III, p. 605.)

Great Britain was contending that as France had dispossessed her of Hudson's Bay Territories the French should "restore" them, while the French desired to use the word "cede," as if the territories had belonged to the French, and they were for the first time ceding them to Great Britain. The word "restore" was used, and it is important to examine the original text of the Treaty, which is in Latin. The words used in that Article, "spectantibus ad eadem," show clearly that France was to restore to England all the lands looking towards the Hudson's Bay: in other words, the whole water-shed of the waters running into the Hudson's Bay.

The first part of the 110th Section does away with any exception, and left nothing for the French to hold possession of in Hudson's Bay.

Mr. Mills, at p. 159 of his Report, after quoting the portion of the 10th Section above referred to, says: "The words of the Treaty just quoted and the attendant circumstances show that what was claimed by England and yielded by France was the Bay and the country upon its margin. Nevertheless, the language of the Treaty did not make it impossible for England, if she were so disposed, to insist upon the possession of the whole country to the land's height. France, too, consented with reluctance to the use of the word 'restoration' instead of 'cession.'"

The Treaty not only made it possible for England to insist upon the possession of the whole country to the land's height, but from the very moment Commissaries were appointed as provided by the Treaty she always insisted that she was entitled to the whole country, and it will be apparent that France assented to to this contention as being the correct interpretation of the Treaty.

Although Commissaries were appointed as provided by the Treaty, and notwithstanding the Commissaries failed to define the boundaries between the territories of each of the Governments, it was in some manner assumed that the boundary had been settled by the 49th parallel; and this was looked upon by the Americans and by the English themselves as being the southern boundary of the Hudson's Bay Company's territory. And we find that in the discussions which took place in regard to the boundary line from the north-west angle of the Lake of the Woods to the Rocky Mountains, the United States asserting on the one hand, and Great Britain not denying on the other that the 49th parallel was the boundary between their respective countries, because it was the southern boundary of the Hudson's Bay.

"From the coast of Labrador to a certain point north of Lake Superior those limits were fixed according to certain metes and bounds, and from that point the line of demarcation was agreed to extend indefinitely due west along the 49th parallel of north latitude. It was in conformity with that arrangement that the United States did claim that parallel as the northern boundary of Louisiana." (Greenshaw's Oregon, 2nd ed., p. 460.)

Whether a boundary was ever agreed upon, or whether it was merely assumed that the boundary above stated had been assented to, cannot now be of much importance, as in 1760 the Marquis de Vaudreuil did not pretend that the Canada of the French extended in a north-westerly direction beyond the Red Lake.

On the 4th August, 1714, the Hudson's Bay Company sent a memorandum to the Lords Commissioners of Trade and Plantations, accompanied by a map in which they claimed that the eastern boundary should be a line running from Grimington's Island through Lake Wisconsin or Mistassinnie, and from the said lake by a line run south-westward into 49 degrees north latitude, as by the red line may more par-

ticularly appear, and that that latitude be the limit; that the French do not come to the north of it nor the English to the South of it. (Ont. Docts., pp. 131-2.)

When, in 1719, Commissaries were appointed the instructions given to Mr. Pultney and Col. Bladen, the British Commissaries, were explicit to claim to the 49th of north latitude where another line was to begin and extend westward upon the 49th parallel, over which said lines the French were to be prohibited from passing. (Ont. Docts., p. 362.)

In order that there might be no mistaking the full extent of the demand of the British Government, and to show that under the Treaty, England was claiming the whole territory northward to the height of land and westward to the Rocky Mountains, the English commissaries in 1719 sent to the French commissaries a memoir on the subject of the boundary, in which they set forth that "the French since the Treaty of Utrecht had made a settlement at the source of the River Albany, the Commissaries of His Britannic Majesty insist that the French shall quit the said settlement, and that the fort, if there be any such building, shall be given up to the company of English merchants trading in Hudson's Bay aforesaid."

"The said Commissaries further demand that the subjects of His Most Christian Majesty shall not build forts or found settlements upon any of the rivers which empty into Hudson's Bay under any pretext whatsoever, and that the stream and the entire navigation of the said rivers shall be left free to the company of English merchants trading into Hudson's Bay and to such Indians as wish to traffic with them." (Ont. Docts., p. 365.)

Sir Travers Twiss says:—

"The object of the 10th Article of the Treaty of Utrecht was to secure to the Hudson's Bay Company the restoration of the forts and other possessions of which they had been deprived at various times by French expeditions from Canada, and of which some had been yielded to France by the 7th Article of the Treaty of Ryswick. By this latter Treaty Louis XIV. had at last recognized William III. as King of Great Britain and Ireland; and William, in return, had consented that the principle of *uti possidetis* should be the basis of the negotiations between the two Crowns. By the 10th Article, however, of the Treaty of Utrecht, the French King agreed to restore to the Queen (Anne) of Great Britain, 'to be possessed in full right forever, the Bay and Straits of Hudson, together with all lands, seas, sea coasts, rivers and places situate in the said Bay and Straits, and which belong thereto; no tracts of land or sea being excepted which are at present possessed by the subjects of France.' The only question, therefore, for Commissaries to settle were the limits of the Bay and Straits of Hudson, *coastwards*, on the side of the French Province of Canada, as all the country drained by streams entering into the Bay and Straits of Hudson were, by the terms of the Treaty, recognized to be part of the possessions of Great Britain."

"If the coast boundary, therefore, was once understood by the parties, the head waters of the streams that empty themselves into the Bay and Straits of Hudson indicate the line which at once satisfied the other conditions of the treaty. Such a line, if commenced at the eastern extremity of the Straits of Hudson, would have swept along through the sources of the streams flowing into the Lake Mistassinnie and Abbitibis, the Rainy Lake, in 48° 30', which empties itself by the Rainy River into the Lake of the Woods, the Red Lake and Lake Travers."

"This last lake would have been the extreme southern limit in about 45° 40', whence the line would have wound upward to the north-west, pursuing a serpentine course, and resting with its extremity upon the Rocky Mountains, in about the 48th parallel of latitude. Such would have been the boundary line between the French Possessions and the Hudson's Bay district; and so we find that in the limits of Canada, assigned by the Marquis de Vaudreuil himself, when he surrendered the Province to Sir J. Amherst, the Red Lake is the apex of the Province of Canada, or the point of departure from which, on the one side, the line is drawn to Lake Superior; on the other, 'follows a serpentine course southward to the River Oubache, or Wabash, and along it to the junction with the Ohio.' This fact was insisted upon by the British Government in their answer to the ultimatum of France, sent in on the 1st of



September, 1761, and the map which was presented on that occasion by Mr. Stanley, the British Minister, embodying those limits, was assented to in the French memorial of the 9th of September." (Historical Memorial of the Negotiations of France and England from March 26th to Sept. 20th, 1761. Published at Paris by authority.) (Twiss' Oregon Boundary, pp. 209-211.)

"By the Treaty of Utrecht, the British possessions of the north-west of Canada were acknowledged to extend to the head-waters of the rivers emptying themselves into the Bay of Hudson; by the Treaty of Paris they were united to the British possessions on the Atlantic by the cession of Canada and all her dependencies; and France contracted her dominions within the right bank of the Mississippi. That France did not retain any territory after the Treaty to the north-west of the sources of the Mississippi will be obvious, when it is kept in mind that the sources of the Mississippi are in  $47^{\circ} 35'$ , whilst the sources of the Red River, which flows through Lake Winnipeg, and ultimately finds its way by the Nelson River into the Bay of Hudson, are in Lakes Travers, in about  $45^{\circ} 40'$ " (Twiss' Oregon, p. 226.)

It has not been thought necessary to refer to the numerous maps described in the Ontario Documents, as unless a map has been made use of in connection with a treaty, or a boundary has been defined thereon, but little reliance can be placed upon it. Sir Travers Twiss says: "The claim, however, to the westwardly extension of New France to the Pacific Ocean requires some better evidence than the maps of French geographers. A map can furnish no proof of territorial title: it may illustrate a claim, but it cannot prove it. The proof must be derived from facts which the law of nations recognizes as founding a title to territory. Maps, as such, that is, when they have not had a special character attached to them by treaties, merely represent the *opinions of the geographers* who have constructed them, which opinions are frequently founded on fictitious or erroneous statements: *e.g.*, the map of the discoveries of North America by Ph. Buache and J. N. De'Lisle in 1750, in which portions of the west coast of America were delineated in accordance with De Fonte's story, and the maps of North-west America at the end of the seventeenth and beginning of the eighteenth centuries, which represent California as lately ascertained to be an island. (Twiss' Oregon, pp. 305-6.)

When new Commissaries were appointed in 1750, the Lords of Trade and Plantations requested the Hudson's Bay Company to furnish a memorandum showing the limits claimed, which was done on the 3rd of October in that year, and is substantially as claimed by them in 1719. (Mills, pp. 176-7.)

It were well to consider what territory was comprised within the limits of Louisiana, as this will prove a help to arriving at a proper conclusion as to what England claimed as being comprised in "Canada," or "New France."

According to extracts (Ont. Docts., pp. 41-2) copied from the charter of Louis XIV. to Mr. Crozat, Sept., 1712, it will be seen that Louisiana "was the country watered by Mississippi and its tributary streams from the sea-shore to the Illinois," *i. e.*, the Illinois River was the northern boundary of Louisiana according to this "authoritative document of the French Crown." By the same public document all the rest of the French possessions were united under the Government of New France. (Twiss' Oregon, pp. 219-220.)

In the course of the negotiations respecting the limits of the Provinces of Canada and Louisiana the Marquis de Vaudreuil, who signed the surrender, published his own account of what passed between Sir J. Amherst and himself, of which he considered the English account to be incorrect. "On the officer showing me a map which he had in his hand, I told him the limits were not just, and verbally mentioned others extending Louisiana on one side to the carrying-place of the Miamis, which is the height of the lands whose rivers run into the Ouabache; and on the other to the head of the river of the Illinois." (Annual Register, 1761, p. 268.) Even thus, then, all to the north of the Illinois was admitted to be Canada." (Twiss' Oregon, pp. 220-221.)

What took place at the various Conferences respecting the limits of Canada has been procured from the records of the Foreign Office.

On the 18th August, 1761, M. de Bussy, the French Minister at London, furnished to Mr. Pitt a memorandum of the limits of Louisiana, which bore upon the limits of Canada, and ran thus:

“ Sur les limites de la Louisiane. Pour fixer les limites de la Louisiane du côté des colonies Angloises et du Canada, on tirera une Ligne qui s'étendra depuis Rio Pereido entre la Baye de la Mobile et celle de Pensacola, en passant par le Fort Toulouse chez les Alimabous, et qui, se prolongeant par la point occidentale du Lac Erié enfermera la Rivière des Miamis, et par l'extrémité orientale du Lac Huron, ira aboutir à la hauteur des Terres du côté de la Baye d' Hudson vers le Lac de l'Abitibis, d' où la Ligne sera continuée de l' Est à l' Oriest jusques et compris le “ Lac Superieur.” (Pub. Rec., Off. Vol. 483.)

Instructions, however, accompanied by an ultimatum, were transmitted under date of the 27th August, 1761, to Mr. Stanley, in which it was laid down that these limits could not be acceded to; and Mr. Pitt, in alluding to the conduct of France, stated that among the reasons whereby British confidence had been shaken was “ the claiming, as Louisiana, with an effrontery unparalleled, vast regions which the Marquis de Vaudreuil had surrendered to General Amherst as Canada, and defined himself, with his own hand, as comprehended in the government of that Province where he commanded,” and Mr. Pitt gave the following definition of the boundaries of Canada, as set forth by M. de Vaudreuil:—

“ Le Canada, selon la Ligne de ses limites tracée par le Marquis de Vaudreuil lui-même, quand ce Gouverneur-Général a rendu, par capitulation, la dite Province au Général Britannique le Chevalier Amherst, comprend, d'un côté, les Lacs Huron, Michigan et Superieur, et la dite Ligne, tirée depuis Lac Rouge embrasse par un cours tortueux, la Rivière Ouabache (Wabash) jusqu' à sa jonction avec l'Ohio, et de là se prolonge le long de cette dernière Rivière inclusivement, jusques à son confluent dans la Mississipp; ” and on this definition of the limits of Canada its cession was claimed—a copy of M. de Vaudreuil's map being sent to Mr. Stanley for reference, together with an extract of a letter from General Amherst, dated 4th October, 1760, bearing upon that subject. (Pub. Rec. Off. Vol. 483.)

Annexed will be found a copy of that map of M. de Vaudreuil, to which Mr. Pitt referred, which has been made from the original enclosed by General Amherst in his despatch of the 4th October, 1760, from which documents also the following extracts have been taken:—

“ The Government of Canada includes Lakes Huron, Michigan and Superior, as you will see by the enclosed sketch, the red line being marked by the Marquis de Vaudreuil.”

“ The Government of Quebec begins with Troudines on the north-west and de Chaillon on the south-east, and takes in all the parishes from them down the River St. Lawrence.” (Pub. Rec., Off. Vol. 94, Ama. and W. Indies.)

It is further recorded on the 2nd September, 1761, the Marquis de Vaudreuil's map was shown to the Duke de Choiseul by Mr. Stanley, and that the bounds of Canada were agreed upon as therein stated. This fact is further substantiated by a passage in Mr. Stanley's despatch of the 4th of that month, which runs as follows:—

“ The Duc de Choiseul complained that the bounds of Canada were laid down very unfavorably for France, in the description which your memorial contains, alleging (*sic*) that there had been disputes between the Marquis de Vaudreuil and the Governor of Louisiana with regard to the limits of their two Provinces, wherein the former, being the more able and the more active, had greatly enlarged his jurisdiction; he added, however, that though many such objections might be made, it had been the intention of the King, his master, to make the most full and complete cession of Canada, and that he consented in His name to those limits. I then produced the map you sent me, and it was agreed that this Province should remain to Great Britain as it is there delineated.” (Minutes of a conference at Paris, Sept. 1st, 1761. Pub. Rec. Off. Vol. 483, France.)

The last Mémoire of France to England in these negotiations is dated 9th Sept., 1761, and was delivered by M. de Bussy to Mr. Pitt on the 14th.



The first article fully confirms the acceptance of Franco of the de Vaudreuil map,\* and states as follows:—

“Le Roi, a dit dans son premier mémoire de propositions et dans son ultimatum, “qu’il cederait et garantirait à l’Angleterre la possession du Canada dans la forme la plus étendue: Sa Majesté persiste dans cette offre; et sans disenter sur la ligne des limites, tracé dans une carte présentée par M. Stanley, comme cette ligne demandé par l’Angleterre, est sans doute la forme la plus étendue que l’on puisse donner à la cession le Roi veut bien l’accorder.” (Mémoire Historique sur la Négotiation le la France et de l’Angleterre, 1761, p. 52. F. O. Lib. 4to, No. 434.)

Then came the Treaty of Paris, concluded on 10th February, 1763, by which the Canada of the French was ceded to Great Britain.

By the 7th section of this Treaty, “It is agreed that for the future the confines between the Lominions of His Britannic Majesty and those of His Most Christian Majesty in that part of the world shall be fixed irrevocably by a line drawn along the middle of the River Mississippi from its source to the River Iberville, and from thence by a line drawn along the middle of this river and the Lakes Maurepas and Pontchartrain to the sea.” (Ont. Doc., pp. 18-19.)

As the source of the River Mississippi was Red Lake, and as it was from that point that the Marquis de Vaudreuil directed the red line to be drawn, there can be no difficulty in coming to a conclusion as to what was included within the bounds of the “Canada” of the French.

Now, the proclamation of the King on 7th October, 1763, created four separate Governments, viz.: Quebec, East Florida, West Florida and Grenada.

All the lands not within the limits of the said Governments, and not within the limits of the territory granted to the Hudson’s Bay, were for the present reserved for the protection and dominion of the Indians. (Ont. Docts., p. 26.]

#### QUEBEC ACT, 1774.

When the Quebec Act of 1774 was introduced it was designed to extend the bounds of the Province of Quebec far beyond those created by the Proclamation of the King, issued in October, 1763. By the Act, as originally introduced, it was evidently intended to include in the Province of Quebec “all the territories, islands and countries heretofore a part of the territory of Canada in North America extending southward to the banks of the Mississippi and northward to the southern boundary of the territory granted to the Merchant Adventurers of England trading to Hudson’s Bay, and which said territories, islands and countries are not within the limits of the other British Colonies as allowed and confirmed by the Crown, or which have since the 10th February, 1763, been made a part and parcel of the Province of Newfoundland.” (Mills, pp. 77-8.)

Now, in the Act as passed the words “heretofore a part of the territory of Canada” are left out, and the Act included “all the territories, islands and countries in North America belonging to the Crown of Great Britain,” between certain defined limits along the western boundary of the then Province of Pennsylvania until it strike the River Ohio; and along the bank of the said river westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading in Hudson’s Bay; and all the territories, islands and countries which have since the 10th February, 1763, been made part of the Government of Newfoundland, by, and they are hereby, during His Majesty’s pleasure, annexed to and made part and parcel of the Province of Quebec, as created and established by the said Royal Proclamation of 7th day of October, 1763. (Ont. Docts., p. 3.)

\*Yet on the 30th Nov., weeks after the cessation of these negotiations, M. de Vaudreuil addressed a letter to the Duc de Choiseul, which was published, as stated in the Annual Register of 1761, “to quiet the minds of the people,” and in which the Marquis stated that what he was charged with by the English as regards the limits of Canada was entirely false and groundless and that nothing passed in writing on that head, nor was any line drawn on any map. An. Reg., 1761, pp. 267-8. (See M. de Vaudreuil’s letter, Ont., Docts., p. 159.)

On reading this description it will be seen that the east bank of the Mississippi could not have been intended as the western limit.

Whenever the bank of a river or lake is created a boundary, the Act expressly states such to be the case, as "the eastern bank of the River Connecticut," "the eastern bank of the River St. Lawrence," "thence along the eastern and south-eastern bank of Lake Erie," and "along the bank of the said river (Ohio) until it strikes the Mississippi." Now, when the River Mississippi is reached the description does *not* proceed "along the bank of said river," as in other descriptions, but describes the remaining limit as "northward to the southern boundary of the territory granted to the Merchants Adventurers of England."

It is said that the word "northward" in the Act cannot mean "north," and that, therefore a line drawn north from the junction of the Ohio and Mississippi Rivers to the southern boundary of the Hudson's Bay Company's lands would not conform to the description in the Act.

The meaning of the expression "northward," as used in this Act, received judicial interpretation in the year 1818, on the occasion of the trial of Charles de Reinhard for murder committed at the Dalles; and also during the trial of Archibald McLennan, in the same year, for a like offence.

The Judges of the Court of Queen's Bench, in Lower Canada, in giving judgment in these cases (Ont. Docts. pp. 226-7-8), were clearly of opinion that the western limit of Upper Canada was a line drawn due north from the junction of the Ohio and Mississippi Rivers.

In the Treaty between Great Britain and the United States, in 1846, the term "westward" was used, and it was interpreted to mean "due west." (U. S. Treaties and Conventions, p. 375.)

Because the Commission which issued to Sir Guy Carleton in 1774 extended the boundary of the Province "along the eastern bank of the Mississippi river to the southern boundary of the territory granted to the Hudson's Bay Company," it is asserted that the Commission should govern.

The fact of a Commission having been issued, with this extension not authorized, cannot be made to extend the boundaries created by the Act. These Commissions, being mere instructions to the Governor General, can have no effect in altering territorial boundaries.

The Commission to Governor Andros, of Connecticut, gave him authority to the South Sea.

Lord Elgin's Commission as Governor General, issued in 1846, apparently gave him jurisdiction to the shore of Hudson's Bay; but it never was claimed or pretended that the Commission extended the boundaries of Canada to the shore of that Bay. (For Commission, *vide* Ont. Docts., pp. 51-52.)

1791.

## THE CONSTITUTIONAL ACT.

What is known as the Constitutional Act of 1791 (31 Geo. III., cap. 31), was passed to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled "An Act for making more effectual provision for the Government of the Province of Quebec, in North America," and to make further provision for the Government of the said Province.

"Whereas, an Act was passed in the fourteenth year of the reign of his present Majesty, entitled 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America;' and whereas the said Act is in many respects inapplicable to the present condition and circumstances of the said Province; and whereas, it is expedient and necessary that further provision should now be made for the good government and prosperity thereof; may it therefore please your most excellent Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and



Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that so much of the said Act as in any manner relates to the appointment of a Council for the affairs of the said Province of Quebec, or to the power given by the said Act to the said Council, or to the major part of them, to make ordinances for the peace, welfare and good government of the said Province, with the consent of His Majesty's Governor, Lieutenant Governor, or Commander-in-chief for the time being, shall be and the same is hereby repealed.

"And whereas His Majesty has been pleased to signify, by his message to both Houses of Parliament, his royal intention to divide his Province of Quebec into two separate Provinces, to be called the Province of Upper Canada and the Province of Lower Canada, &c." (Ont. Docts., p. 4.)

The Proclamation of November, 1791 (Ont. Docts. p. 27), declares that by an Order in Council of August it was ordered that the Province of Quebec should be divided into two distinct Provinces. But it is argued that this Proclamation annexed to Upper Canada territories not included in the Province of Quebec. This argument is based upon the use of the word "Canada" at the end of the first paragraph of the Proclamation.

It is stated the 14th Geo. III. "is in many respects inapplicable to the present condition and circumstances of the said Province." To what Province is it applicable? Why, to the Province of Quebec. The Act says the intention of the King was "*to divide his Province of Quebec into two separate Provinces.*"

His Majesty, on the 24th day of August, 1791, "was pleased by and with the advice and consent of his Privy Council to order that the Province of Quebec be divided into two distinct Provinces, to be called the Province of Upper Canada and the Province of Lower Canada, by separating the said two Provinces according to the line of division inserted in the said order." (Ont. Docts., p. 389.)

The Act of Parliament was that alone upon which the Order in Council could be based or the Proclamation issued; and it is quite evident that neither the Order-in-Council nor the Proclamation intended to do more than the Act made provision for, *i. e.*, to divide the Province of Quebec.

The construction put upon this Act by the Court of Queen's Bench in Lower Canada, in *De Reinhard's* case and in *McLennan's* case (Ont. Docts., pp. 226-7-8), was that "Upper Canada could include only that part of the Province so divided as was not contained in Lower Canada, but it could not extend beyond those limits which constituted the Province of Quebec."

In the Commission issued to Lord Dorchester, September 12, 1791, as Captain-General and General-in-Chief of the Provinces of Upper Canada and Lower Canada (wherein the Order in Council of 19th August, 1791, is recited), it states the intention to divide the Province of Quebec into two separate Provinces, "the Province of Upper Canada to comprehend all said lands, territories and islands lying westward of the said line of division as were part of our said Province of Quebec." (Ont. Docts., p. 48.)

The Commission issued in 1794 to Henry Caldwell, Esquire, Receiver-General of the Province of Lower Canada, contains a boundary description of Upper Canada similar to that in the Commission of Lord Dorchester. (Ont. Docts., pp. 389-390.)

The ten Commissions issued to the Governors-General of the Provinces of Upper and Lower Canada between December, 1796, and 1st July, 1835, contain boundary-line descriptions similar to that of Lord Dorchester in September, 1791.

On 13th December, 1838, a Commission was issued to Sir John Colborne as Governor-in-Chief of the Province of Upper Canada, in which, after describing the other boundaries of the Province, it proceeds: "On the west by the Channel of Detroit, Lake St. Clair, up the River St. Clair, Lake Huron, the west shore of Drummond Island, that of St. Joseph and Sugar Island, thence into Lake Superior." (Ont. Docts., p. 390.)

The Commission to the Right Hon. Sir Charles Paulett Thompson, dated 6th September, 1839, contains boundary descriptions similar to above. (Ibid, p. 390.)

29TH AUGUST, 1840.

The Act of Union (Impl. Act 3, 4 Vic., cap. 35) was passed to make "provision for the good government of the Province of Upper Canada and Lower Canada, \* \* \* \* which, after the passing of this Act, shall form and be one Province under the name of the Province of Canada." (Ont. Docts., p. 10.)

After the passing of the Union Act, and on the 29th August, 1840, a Commission was issued to Lord Sydenham as Governor-in-Chief of the Province of *Canada*. The Commission gives the western boundary of the United Provinces, as in the Commission to Sir John Colborne. (Ont. Docts., p. 51.)

The Commission to Lord Metcalf in February, 1843, and that to Earl Cathcart in March, 1846, and the one issued to Lord Elgin on 1st October, 1846, contain boundary line descriptions of Upper Canada similar to that issued to Lord Sydenham in 1840.

It will be seen that, between December, 1838, when Sir John Colborne was appointed Governor-General, until 1852 or 1853, when Lord Elgin's term as representative of Her Majesty expired, the British Government understood and treated the western boundary of Upper Canada as being on the shore of Lake Superior; and it is fair to infer that the Imperial authorities were not ignorant that a line drawn north from the junction of the Ohio and Mississippi would strike the shore of Lake Superior, and they no doubt intended that where the line so struck should be the limit of the jurisdiction of the Governors General, and consequently the westerly limit of the Province of Upper Canada.

Then, in order to reach offenders for crimes committed in the Indian territory (reserved for the Indians by the Proclamation of October, 1763), the Act of 43 Geo. III, cap. 138 (11th August, 1803), was passed. (Ont. Docts., pp. 4-5.)

As doubts existed as to whether the provisions of 43 Geo. III, cap. 138, extended to the Hudson's Bay Territory, the Acts 1 and 2 Geo. IV., cap. 66 (2nd July, 1821), was passed, including the Hudson's Bay Company's *lands and territories heretofore* granted to the Hudson's Bay Company, and under the fourteenth section of that Act the rights and privileges of the Hudson's Bay Company are to remain in full force, virtue and effect. (Ont. Docts., pp. 6, 7, 10.)

So that in all these Acts they were making provision for the government, or at least for the judicial control of the large territories claimed as belonging to the Crown of Great Britain, and which were not included in the Province of Upper Canada.

The sixth clause of the British North America Act, 1867 (Imperial Act, 30th Vic., cap. 3), is as follows:—

"The parts of the Province of Canada (as it exists at the passing of this Act), which formerly constituted respectively the Provinces of Upper Canada and Lower Canada shall be deemed to be severed, and shall form two separate Provinces. The part which formerly constituted the Province of Upper Canada shall constitute the Province of Ontario; and the part which formerly constituted the Province of Lower Canada shall constitute the Province of Quebec." (Ont. Docts., p. 11.)

And the 146th section of the same Act under which Rupert's Land and the North-western territory could be admitted into the Union is as follows:—

"It shall be lawful for the Queen, by and with the advice of Her Majesty's Most Honorable Privy Council, on Addresses from the Houses of Parliament of Canada and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island and British Columbia, to admit those Colonies or Provinces, or any of them, into the Union, and on Address from the Houses of Parliament of Canada, to admit Rupert's Land and the North-western territory, or either of them, into the Union on such terms and conditions, in each case, as are in the Addresses expressed, and as the Queen thinks fit to approve, subject to the provisions of this Act; and the provisions of any Order in Council in that behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland." (Ont. Docts., p. 404.)



On the 17th December, 1867, the Senate and Commons of the Dominion of Canada adopted an address to the Queen, praying Her Majesty to unite Rupert's Land and the North-western territory with this Dominion, and to grant to the Parliament of Canada authority to legislate for their future welfare and good government. (Orders in Council, Dom. Stats., 1872, p. lxvi.)

In compliance with the terms of the above Address the Rupert's Land Act, 1868 (Imperial Act, 31 and 32 Vic., cap. 105), was passed, and under the second section of that Act the term "Rupert's Land" should include the whole of the lands and territories *held, or claimed to be held*, by the said Governor and Company.

On the 19th November, 1869, the Hudson's Bay Company executed a deed of surrender to Her Majesty of Rupert's Land, which included the whole of the lands and territories held, or claimed to be held, by the Company, excepting the lands mentioned in the second and fifth paragraphs. Under the second paragraph the Company might within twelve months select a block of land adjoining each of their stations. The schedule of the lands selected is attached to the surrender, and includes about 46,000 acres of land.

Under paragraph No. 5 "the Company may within fifty years after the surrender claim in any township or district within the fertile belt, and which land is set out for settlement, grants of land not exceeding one-twentieth part of the land so set out."

(6.) "For the purpose of the present agreement the fertile belt is to be bounded as follows: On the south by the United States boundary; on the west by the Rocky Mountains; on the north by the northern branch of the Saskatchewan; on the east by Lake Winnipeg, the Lake of the Woods, and the waters connecting them." (Orders in Council, Stats. of Can., 1872, p. lxxix.)

Such surrender was accepted by Her Majesty by an instrument under her sign manual, and signed on 22nd day of June, 1870.

On the 23rd June, 1870, Her Majesty, by an Order in Council, ordered that after the 15th July, the said North-western territory in Rupert's Land should be admitted and become a part of the Dominion of Canada, on the Dominion paying to the Company £300,000, when Rupert's Land should be transferred to the Dominion of Canada, which transfer has been made and the consideration money paid. (Ont. Docs., 405-6-7-8.)

On the very threshold of Confederation Ontario knew the terms upon which Rupert's Land and the North-western territory might be admitted into the Union; and during the negotiations that were pending between the imperial authorities and the Dominion respecting the surrender by the Hudson's Bay Company of their lands and territories, rights and privileges, the Ontario Government never interfered or claimed that what was about being surrendered to Her Majesty for the purpose of admission into the Dominion had at any time formed a part of the Province of Upper Canada—although, Ontario must be assumed to have known that the Hudson's Bay Company was, in 1857, claiming under its charter that the southern boundary of the Company's territory was the height of land dividing the waters which flow into the Hudson's Bay from those emptying into the St. Lawrence and the Great Lakes, and that the western boundary was the base of the Rocky Mountains.

In thus lying by while the Dominion was purchasing this territory, and without forbidding the purchase or claiming any interest whatever in the rights and privileges about being acquired that Province is now estopped from setting up that its western boundary extends beyond the meridian passing through the point of junction of the Ohio and Mississippi rivers, north of the United States and south of the Hudson's Bay territories. All the remaining territory was "held, or claimed to be held, by the Governor and Company," and was, as such, paid for by the Dominion. (*Gregg v. Wells*, 10 A. and E., 90.)

The acceptance by the Imperial Government of a surrender of what the Hudson's Bay Company claimed as territory belonging to them was an admission that no portions of these territories was ever included in the Province of Upper Canada. The British Government being bound by this admission, surely Ontario must be.

In 1871 a Commissioner was appointed by each of the Governments of the Dominion and Province of Ontario for the settlement of the northerly and westerly boundaries of the Province.

The instructions given to the Commissioners on behalf of the Dominion were that—

1. The boundary in question is clearly identical with the limits of the Province of Quebec, according to the 14th Geo. III., ch. 83, known as the "Quebec Act," and is described in the said Act as follows, that is to say: Having set forth the westerly position of the southern boundary of the Province as extending along the River Ohio "westward to the banks of the Mississippi" the description continues from thence (*i. e.*, the junction of the two rivers) "and northward to the southern boundary of "the territory granted to the Merchant Adventurers of England trading to the "Hudson's Bay."

Having determined the precise longitude, west of Greenwich, of the extreme point of land making the junction of the north and east banks respectively of the said river, you will proceed to ascertain and define the corresponding point of longitude or intersection of the meridian passing through the said junction with the international boundary between Canada and the United States.

Looking, however, to the tracing enclosed, marked A., intending to illustrate these intersections, it is evident that such meridian would intersect the international boundary in Lake Superior.

Presuming this to be the case, you will determine and locate the said meridians the same being the westerly portion of the boundary in question, at such a point on the northerly shore of the said lake as may be nearest to the said international boundary, and from thence survey a line due south to deep water, making the same upon and across any and all points or islands which may intervene, and from the point on the main shore formed as aforesaid, draw and mark a line due north to the southern boundary of the Hudson's Bay territory before mentioned. This will complete the survey of the westerly boundary line sought to be established.

You will then proceed to trace out, survey and mark, eastwardly, the aforementioned *southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay.*

This is well understood to be the height of land dividing the waters which flow into Hudson's Bay from those emptying into the valleys of the Great Lakes, and forming the northern boundary of Ontario; and the same is to be traced and surveyed, following its various windings till you arrive at the angle therein between the Provinces of Ontario and Quebec, as the latter is at present bounded, having accomplished which, the same will have been completed.

The Privy Council of Ontario on receiving a copy of above instructions advise the Dominion that the Province of Ontario claims that the boundary line is very different from the one defined by said the instructions, and cannot consent to the prosecution of the Commission for the purpose of marking on the ground line so defined, and that the Commissioner appointed by the Government of Ontario should be instructed to abstain from taking any further action under his Commission. (Ont. Docts., pp. 340-1.)

The boundaries Ontario was willing to accept are set forth in an Order in Council. (Ont. Docts., p. 243.)

Until the boundaries could be definitely adjusted, provisional boundaries were agreed upon on the 3rd of June, 1874, as follows: On the west, the meridian line passing through the most easterly point of Hunter's Island, run south until it meets the boundary line between the United States and Canada, and north until it intersects the fifty-first parallel of latitude; and the said fifty-first parallel of latitude shall be the conventional boundary of the Province of Ontario on the north. (Ont. Docts., p. 347.)



## SUPPLEMENT TO DOMINION CASE.

*(Copied from Documents furnished by the Foreign Office.)*

M. de Vaudreuil was Governor of La Nouvelle France in 1755.

General Wm. Shirley (as Mr. Shirley) was Captain-General and Commander-in-Chief of the Province of Massachusetts' Bay in 1749, and in July of that year it was agreed that Commissaries should be appointed to define, in an amicable spirit, the boundaries between the colonial possessions of Great Britain and France in North America.

There is proof that Mr. Shirley was originally one of these Commissaries, and that Mr. Mildmay was the other, for, on the 21st September, 1750, a memoire, signed "W. Shirley" and "W. Mildmay" was presented to the French Commissaries, respecting the boundaries of Nova Scotia or Acadia, under Art. 12 of the Treaty of Utrecht; and on the 11th of January, 1751, a second memoire on the same subject was signed by "W. Shirley" and "Wm. Mildmay," as British Commissaries at Paris; but it is evident that Mr. Shirley had ceased to be a Commissary in April, 1755, for, on the 23rd January, 1753, a further memoire was presented by the British Commissaries to the French Commissaries respecting the same boundary, but instead of its bearing the signatures of Mr. Shirley and Mr. Mildmay, it was signed "Mildmay" and "Ruvigny de Cosne."

Mr. Shirley had, therefore, no doubt returned to America, and Mr. Ruvigny de Cosne, who was British Chargé d'Affaires at Paris, in the absence of Earl of Albemarle, had succeeded him as one of the British Commissioners.

In May, 1755, the Commission was still sitting at Paris.

On the 14th of May of that year a memoire was delivered by the French Ambassador in London, the Duke the Mirepoix, to the British Minister for Foreign Affairs, in which was laid down the following four points of discussion:—

1. Limits of Acadia.
2. Limits of Canada.
3. The course and territory of the Ohio.
4. The islands of St. Lucia, St. Vincent, Dominica and Tobago.

With regard to the limits of Canada, the memoire ran as follows:—

The Court of France has decisively rejected, and will always reject, the proposition which has been made by England, that the southern bank of the River St. Lawrence and Lakes Ontario and Erie shall serve as boundaries between the two nations.

It is necessary to establish as a base of negotiation relative to this Article, that the River St. Lawrence is the centre of Canada. This truth is justified by all titles, by all authors, and by possession. All that France will be able to admit, after having established this principle, which cannot be reasonably contradicted, is to examine, in regard to this object, whether the reciprocal convenience of the two nations can exact some particular arrangement thereto, in order to fix invariably the respective boundaries.

The only pretext the English make use of to color their pretensions is drawn from Article XV. of the Treaty of Utrecht; but in examining attentively all the expressions of that Article, it is evident that nothing is less founded than the inductions which the Court of London actually wishes to draw from it.

1. It is only a question in this Article of the person of the Savages, and not at all of their country, or pretended territory, since they have no determined territory, and the only knowledge they have of property is the actual use they make of the land they occupy to-day, and which they shall cease perhaps to occupy to-morrow.

2. It would be absurd to pretend that everywhere where a Savage, a friend or subject of one of the two Crowns, should make a passing residence, that country that he had dwelt in should belong to the Crown of which he might be the subject or the friend.

3. The Savages in question are free and independent, and there are none that could be called subjects of one or the other Crown; the enunciation of the Treaty of Utrecht in this respect is incorrect, and cannot change the nature of things; it is certain that no Englishman would dare, without running the risk of being massacred, tell the Iroquois that they are subjects of England; these savage nations govern themselves, and are as much, and more, friends and allies of France than of England; several French families are even affiliated among the Iroquois, and have dwelled with them during the course of the last war, during which the five nations preserved the most exact neutrality.

4. Article XV. of the Treaty of Utrecht contains the same stipulations, as much in favor of the French as in favor of the English, and these stipulations are mutual; the French could then sustain with a better title than the English pretend about the Iroquois, that the nations Abéaquistes and Souriquois, otherwise Micmaes, Malecites, Cannibas, &c., are subjects of France, and as there are some Souriquois who inhabit the extremity of the peninsula of Cote, Cape Foucher, and Cape Sable, it would follow that the French could pretend to form settlements there, with as much right as the English have formed them at Oswego, or Chouagen, on the shores of Lake Ontario in 1726 or 1727, and consequently long after the peace of Utrecht; France has not ceased since that time to complain of that enterprise, and she relies upon the Fort of Chouagen being destroyed.

5. The Treaty of Utrecht has been ill interpreted in pretending that it would authorize the French and English to go and trade indistinctly amongst all the savage nations, under pretext of subjection, alliance, or friendship; this Article well understood and well expounded, assures only the liberty of commerce which the savages can make among themselves, or with European nations, and does not at all authorize them to leave the confines of their colonies to go and trade with the Savages.

6. Finally, this Article XV conveys that it shall be settled that the American nations shall be reputed subjects or friends of the two Crowns; this stipulation has not been executed, because, in fact, it is scarcely susceptible of execution, since such a savage nation, which to-day is friendly, to-morrow may become an enemy, and, consequently, the fixation which might have been appointed for it, would be continually contradicted by fact.

All that has just been exposed proves clearly that in discussing concerning the rules of the justice and right of Article XV of the Treaty of Utrecht, it will be easy to destroy the false interpretations that have been given it; it will not be less easy to demonstrate that the English should not be determined by any motive of interest to put forward the pretensions they have formed; it is not a question in these vast regions of America, to dispute about a little more or a little less land. The essential interests is confined to two objects, that of security and that of commerce; and the Court of France will be always disposed to concert, in these two respects, with that of London, equitable and solid arrangements, as well for the present as for the future.

On the 7th of June following, the British Government returned a reply to this Mémoire, repeating Article by Article, and with reference to the limits of Canada, said:—

It will be difficult to form a precise idea of what is called in the Memorial the centre of Canada, and still less, can it be admitted as a base of negotiation that the River St. Lawrence is the centre of that Province; this is advanced without proof, and it is impossible that the course of a river of that length can form the centre of any country; besides, Great Britain cannot grant that the country between the northern coast of the Bay of Fundy and the southern bank of the River St. Lawrence, which Great Britain has already offered to leave neutral, and not possessed by either of the two nations, in reserve for the borders that are proposed to be drawn for it, ought to be regarded or has ever been considered as a part of Canada, since the contrary has been demonstrated by authentic proofs. Neither can Great Britain admit that France has right to Lakes Ontario and Erie, and the Niagara River, and to the navigation of these waters exclusively, since it is evident, by incontestable facts,



that the subjects of Great Britain and France, as well as the five nations Iroquois, have indiscriminately made use of the navigation of these lakes and this river, according as occasions and convenience have required; but as regards a piece of country situated on the south bank of the River St. Lawrence, exclusive of that already proposed to be left neutral, the boundaries of which are in dispute between the two nations or their respective colonies, the Court of Great Britain is ready to enter into a discussion in regard to this, and to fix the limits of it by an amicable negotiation, but without prejudice, nevertheless, to the rights and possessions of any of these five nations.

With regard to the exposition that is made in the French Memorial, of the XVth Article of the Treaty of Utrecht, the court of Great Britain does not conceive that it is authorised either by the words or the intention of that Article.

1. The Court of Great Britain cannot admit that this article only has regard to the person of the Savages and not their country, the words of that Treaty are clear and precise, viz.: The Five Nations or Cantons Indians are subject to the rule of Great Britain, which, by the accepted exposition of all Treaties, must have reference to the country as well as to the person of the inhabitants; France has recognized this most solemnly; she has well weighed the importance of that avowal at the time of the signature of this Treaty, and Great Britain can never depart from it; the countries possessed by these Indians are very well known, and are not at all as indeterminate as is pretended in the Memorial; they possess and transfer them, as other proprietors do everywhere else.

2. Great Britain has never pretended that the country in which a Savage should make a passing residence, would belong to the Crown whose subject or friend he might be.

3. However free and independent the Savages in question may be (which is a point which the Court of Great Britain does not at all wish to discuss) they can only be regarded as subjects of Great Britain, and treated as such by France in particular, since she has solemnly engaged herself by the Treaty of Utrecht, renewed and confirmed in the best form by that of Aix-la-Chapelle, to regard them as such; the nature of things is not changed by the Treaty of Utrecht. The same people, the same country exist still; but the acknowledgment made by France of the subjection of the Iroquois to Great Britain, is a perpetual proof of her right in this respect, which can never be disputed with her by France.

4. It is true that the XXth Article of the Treaty of Utrecht contains the same stipulations in favor of the French as in favor of the English, with regard to such Indian nations as shall be deemed, after the conclusion of this Treaty, by Commissaries to be subjects of Great Britain or of France; but as to what is mentioned of the Five Nations or Cantons Iroquois, France has distinctly and specifically declared by the said XVth Article that they are subjects of Great Britain "*Magnæ Britanniæ imperio subjecti*," and consequently this is a point to be no more disputed about.

5. In whatever manner one interprets the Treaty of Utrecht with respect to the trade which will be permitted the English and French to carry on indiscriminately with the savage nations, it is nevertheless very certain that such a general trade is by no means forbidden by this Treaty; it is an ordinary and natural right to transact business with one's own subjects, allies or friends; but to come in force into the territories belonging to the subjects or allies of another Crown, to build forts there, to deprive them of their territories and to appropriate them, is not and will not be authorized by any pretention, not even by the most uncertain of all, viz., convenience:—However, such are the Forts of Frederick, Niagara, Presqu'Isle, Rivière-aux-Bœufs, and all those that have been built on the Oyo and in the adjacent countries. Whatever pretext France can allege for regarding these countries as dependencies of Canada, it is certainly true that they have belonged to, and (inasmuch as they have not been ceded or transferred to the English,) belong still to the same Indian nations, that France has agreed, by the XXth Article of the Treaty of Utrecht, not to molest, "*nullo in posterum impedimento aut molestia afficiant*."

6. It has already been proved that France has, by the express words of the said Treaty, fully and absolutely recognized the Iroquois as subjects of Great Britain, it would not have been as difficult as is pretended in the memorial, to come to an agreement on the subject of the other Indians, if among the many Commissions which have emanated to settle this point, there had been a mutual disposition to come to a conclusion; the acts of these Commissions have sufficiently shown the true reasons which have prevented the execution of the XVth Article of the Treaty of Utrecht, without recourse to an imaginary supposition, as if the Treaty was not capable of being executed; a supposition which is evidently destroyed by the Treaty itself with regard to the Iroquois nations.

On the 22nd of July, 1755, Monsieur de Mirepoix, the French Ambassador, left England by order of his Court, without taking leave; consequently on the same day Mr. de Cosne was instructed by His Britannic Majesty's Government to quit France immediately, without taking leave, and to repair to England, which he did on the 25th, and arrived in England, with all his public papers, on the 31st of the same month.

Negotiations were accordingly suspended, and on the 17th of May, 1756, war was declared by Great Britain against France; followed on the 9th of June by a French *ordonnance* declaring war against England.

No further reports than those above described would appear to have been made to the Government by the English Commissaries between the 1st April, 1755, and March, 1756.

The following is an account of what passed between the 26th March and 20th September, 1766.

On the 26th of March, 1761, the Duc de Choiseul, in the name of the King of France, addressed the King of Great Britain, through Mr. Pitt, a letter communicating proposals as to the bases of negotiations for a separate peace between England and France, in addition to those pending to secure a general European peace.

On the 8th of April the British reply was forwarded to the Duke, containing the views of the Court of St. James as to the proper bases to be established, in which willingness was expressed to receive an Envoy, duly authorized to enter into negotiations; the result of this was that M. de Bussy was appointed French Minister to London, and Mr. Hans Stanley was sent in a similar capacity from Great Britain to Paris; these diplomatists arriving at their respective posts early in June of the same year.

Negotiations were immediately set on foot for the conclusion of peace between France and England; but the chief difficulty in arriving at an amicable understanding consisted in the desire of the French to retain the fisheries at and near Cape Breton.

On the question of Canada, under date of the 17th June, the Duke de Choiseul had demanded that the boundary of Canada in that part of the Ohio which is regulated by the water line, and so clearly defined by the Treaty under discussion, be so established that there may not be any contestation between the two nations as to the said boundary.

On the 26th June, the above proposal of the Duc de Choiseul, as to the fixation of new limits to Canada towards the Ohio, was rejected by Great Britain on the grounds that it was "captious and insidious, thrown out in hopes, if agreed to, to shorten thereby the extent of Canada, and to lengthen the boundaries of Louisiana, and in the view to establish what must not be admitted, namely, that all which was not Canada was Louisiana, whereby all the intermediate nations and countries, the true barrier to each Province would be given up to France."

The intentions of the Court of St. James were further fully set forth, as to Canada, in the following passage of the same letter:—

"First, then, the King will never depart from the total and entire cession, on the part of France, without new limits or any exception whatever, of all Canada and its dependencies."



On the 29th June Mr. Stanley reported that "the southern bounds of Canada were to be so settled as to give that Province entire and unmutilated to Great Britain, such as France, in short, held it in all respects;" and on the 1st July he stated that "it was agreed that Canada, as that Province was determined by their (French) geographers and historians, as well as by the respective civil and military departments, should be ceded, undismembered and entire to Great Britain."

In his despatch of the 14th July, 1761, Mr. Stanley forwarded a *mémoire* containing proposals from the Duc de Choiseul, Art. 1 of which ran as follows:—

"1. The King cedes and guarantees Canada to the King of England, such as it has been, and in right ought to be possessed by France, without restriction, and without the liberty of returning upon any pretence whatever against this cession or guaranty, and without interrupting the Crown of England in the entire possession of Canada."

It must, however, be remembered that other questions of great importance bearing on European interests, were involved in these negotiations for peace; and as difficulties were offered by France to the British proposals, on the 25th July, Mr. Stanley was instructed to present an ultimatum from Great Britain, the first point of which related to Canada, and declared that His Britannic Majesty would never depart from the total and entire cession on the part of France, without new limits, or any exception whatever, of all Canada and its dependencies."

The reply of France to this ultimatum was transmitted home in Mr. Stanley's despatch of 4th August, which contained the following clause with regard to Canada:

"The King consents to cede Canada to England in the most extensive form, as specified in the memorial of propositions."

Nevertheless, the replies of the French Government to the other demands were not deemed satisfactory, and Mr. Stanley, assuming that the Treaty had failed, stated in his despatch of the 6th August, that he was "convinced that the sole cause of the failure was the determined resistance of the French as to the entire concession of the fishery."

M. de Bussy was, as has been stated, at this time French Minister in London, and on the 18th August, he furnished to Mr. Pitt a memo. upon the limits of Louisiana, which bore upon the limits of Canada, and ran thus:

"On the limits of Louisiana.

"To fix the limits of Louisiana towards the English colonies and Canada, a line should be drawn which will extend from Rio Pareido, between the Bay of Mobile and that of Pensacola, passing by Fort Toulouse in the Alimabous, and which, being prolonged by the western point of Lake Erie, will enclose the river of the Miamis, and by the eastern extremity of Lake Huron will go and meet the high lands on the side of Hudson's Bay towards the Lake of Abitibis, from whence the line will be continued from east to west up to and comprising Lake Superior."

Instructions, however, accompanied by an ultimatum, were transmitted under date the 27th August, 1761, to Mr. Stanley, in which it was laid down that these limits could not be acceded to, and Mr. Pitt, in alluding to the conduct of France, stated that among the reasons whereby British confidence had been shaken, was "the claiming, as Louisiana, with an effrontery unparalleled, vast regions which the Marquis de Vaudreuil had surrendered to General Amherst, as Canada, and defined himself, with his own hand, as comprehended in the government of that Province where he commanded"; and Mr. Pitt gave the following definition of the boundaries of Canada, as set forth by M. de Vaudreuil.

"Canada, according to the line of its limits traced by the Marquis de Vaudreuil himself, when this Governor General surrendered, by capitulation, the said Province to the British General, Chevalier Amherst, comprises, on one side, Lakes Huron, Michigan and Superior, and the said line, drawn from Lake Rouge, embraces by tortuous course, the River Ouabache (Wabash) up to its junction with the Ohio, and from there extends the length of this river inclusively, until its confluence into the Mississippi"; and on this definition of the limits of Canada, its cession was claimed, a copy of M. de Vaudreuil's map being sent to Mr. Stanley for reference, together

with an extract of a letter from General Amherst, dated 4th October, 1760, bearing upon that subject.

Annexed hereto will be found a further copy of that map of M. de Vaudreuil, to which Mr. Pitt referred, which has been made from the original enclosed by General Amherst in his despatch of 4th October, 1760, from which document also the following extracts have been taken:

"The Government of Canada includes Lakes Huron, Michigan and Superior, as you will see by the enclosed sketch, the red line being marked by the Marquis de Vaudreuil."

"The above State is taken only from the part beginning above the Island of Montreal, with the Cedars and Vaudreuil on the north-west of the River St. Lawrence, and Chateau-Gay on the south-east, and ends with Berthier on the north-west of the river, the Island of Dupas and Sorel on the south-east.

"The Government of Trois Rivières joins that of Montreal, with Maskenongy on the north-west, and Yamaska on the south-east, and ends with Ste. Anne on the north-west, and St. Pierre de Becquit on the south-east of the River St. Lawrence."

"The Government of Quebec begins with Grondines on the north-west and de Chaillon on the south-east, and takes in all the parishes from there down the River St. Lawrence."

It is further recorded on the 2nd September, the Marquis de Vaudreuil's map was shown to the Duc de Choiseul by Mr. Stanley, and that the bounds of Canada were agreed upon as therein stated. This fact is further substantiated by a passage in Mr. Stanley's despatch of the 4th of that month, which runs as follows:—

"The Duc de Choiseul complained that the bounds of Canada were laid down very unfavorably to France in the description which your memorial contains, alleging (sic) that there had been disputes between the Marquis de Vaudreuil and the Governor of Louisiana with regard to the limits of their two Provinces, wherein the former, being the more able and the more active, had greatly enlarged his jurisdiction; he added, however, that though many such objections might be made, it had been the intention of the King, his master, to make the most full and complete cession of Canada, and that he consented in his name to those limits. I then produced the map you sent me, and it was agreed that this Province should remain to Britain as it is there delineated."

The last *mémoire* of France to England, in these negotiations, is dated 9th September, and was delivered by M. de Bussy to Mr. Pitt on the 14th.

The first Article fully confirms the acceptance, by France, of the de Vaudreuil Map, and states as follows:—

"The King has declared in his first memorial of propositions, and in his ultimatum, that he will cede and guarantee to England the possession of Canada, in the most ample manner. His Majesty still persists in that offer, and without discussing the line of its limits marked on a map presented by Mr. Stanley—as that line, on which England rests its demands, is without doubt the most extensive bound which can be given to the cession—the King is willing to grant it."

On September 15th, in consequence of the non-acceptance by France of the terms offered by Great Britain, instructions were sent to the British Minister at Paris to demand his passports, and on the 21st a passport was sent to M. de Bussy, the French envoy in London.

On the 20th, Mr. Stanley received his passport, together with an assurance that the King of France would be found at any time willing to re-open these negotiations, which were, in effect, resumed the following year, for on the 29th August, 1762, the French King despatched the Duc de Nivernois to London to carry over the peace

\* Yet, on the 30th November, weeks after the cessation of these negotiations, M. de Vaudreuil addressed a letter to the Duc de Choiseul, which was published, as stated in the Annual Register 1761, "to quiet the minds of the people," and in which the Marquis stated that what he was argued with by the English as regards the limits of Canada was entirely false and groundless, and that nothing passed in writing on that head, nor was any line drawn on any map.—*Ann.*, 1761, pp. 267-268.



propositions; and, as a result, preliminary articles of peace were signed at Fontainebleau on the 3rd November, 1762.

From these is given the following extract:—"His Majesty renounces all the pretensions that he had formerly formed, or could form, for New Scotland, or Acadia, in all its parts, and guarantees it quite entire and with all its dependencies to the King of Great Britain;—Besides, His Very Christian Majesty cedes and guarantees to His said Britannic Majesty, in all its entirety, Canada, with all its dependencies, as well as the Island of Cape Breton and all the other islands in the Gulf and River St. Lawrence, without restriction, without His being free to come back upon this cession and guarantee, under any pretext, nor to trouble Great Britain in the aforementioned possessions.

EDWARD HERTSLET.

FOREIGN OFFICE,  
27th April, 1878.

### 5.—ARGUMENT OF HUGH MACMAHON, Q.C.

Hugh MacMahon, Esq., Q.C., opened the case for the Dominion. He said—A great deal which has been urged upon the other side we have never questioned at all; and a great part of what has been addressed to the Commissioners by my learned friend Mr. Hodgins we agree with entirely. What I propose doing, in the first place, is to glance cursorily at the evidence in regard to the early settlements, although I do not conceive it to have very much bearing on the case; still, as it has been pressed on the Arbitrators by the Attorney-General so very forcibly, I consider it necessary to view the facts as they appear from the historical documents. France claimed in 1685, and in 1671—1671 to 1685—that she was entitled to the North West, to what is claimed as part of the Hudson Bay Territory; and that claim was set up first by De Callieres, when writing to the authorities in France in 1685 and afterwards. His memoir was followed by the Marquis de Denonville, when communicating with the same Government. Now, it was stated in that memoir just as has been asserted by the Attorney-General, and set forth in the New York Historical Documents, vol. 9, page 287, and also at page 304 of the said volume. But in that statement of M. de Denonville, he admits that documentary evidence could not even at that time be adduced in support of those visits having been made to Hudson Bay. His words are: "I annex to this letter a memoir of our rights to the entire of that country of which our registers ought to be full, *but no memorials of them are to be found.*" When we come to examine into the facts of these asserted voyages, it will be found that not one of them was made until the voyage of Albanel in 1672. It is asserted that Jean Bourdon, the Attorney-General in 1656, explored the entire coast of Labrador and entered Hudson Bay. Now there is no record whatever of that, nothing whatever to support it. But there is a record in 1655 that Sieur Bourdon, then Attorney-General, was authorized to make a discovery of the Hudson Bay, and it will be seen hereafter what he did in order to comply with that *arrêt* of the Sovereign Council. He did make an attempt. He started on his voyage on 2nd May, 1657. The statement is contained on page 3 of the Dominion case. He started on May 2nd and returned on 11th August of the same year. My learned friend had to admit that there was no possible chance of his making a voyage to Hudson Bay between those dates. The account of it, as given in the relations of the Jesuits of 1658, page 9, is this: "The 11th August there appeared the barque of M. Bourdon, which having descended the Grand River on the north side, sailed as far as the 55th degree, where it encountered a great bank of ice, which caused it to return having lost two Hurons that it had taken as guides. The Esquimaux savages of the "north massacred them," and wounded a Frenchman with three arrows and one cut "with a knife." Jean Bourdon was of the Province of Quebec, he was well known to the

Jesuits, and trusted by them; and it is stated in the memoir that he went with Father Jaques on an embassy to Governor Dongan, then Governor of the Province of New York. The other statement is that Father Dablon with Sieur de Valliere were ordered in 1661 to proceed to the country about Hudson Bay, and they went thither accordingly. Now all the accounts agree in the statement that Dablon never reached Hudson Bay. In Shea's *Charlevoix*, vol. 3, pages 39, 40, it is stated that Father Dablon attempted to penetrate to the Northern Ocean by ascending the Saguenay. Early in July, two months after they set out, they found themselves at the head of the Nekauba River, 300 miles from Lake St. John. They could not proceed any further, being warned by the approach of the Iroquois.

Now, in the New York Historical Documents, there is a note by the editor of these papers on page 97, which gives an account of the Rev. Father Dablon from the time of his arrival in Canada in 1655. He was immediately sent missionary to Onondaga, where he continued with a brief interval until 1658. In 1661 he set out overland for Hudson Bay, but succeeded only reaching the head waters of the Nekauba, 300 miles from Lake St. John. An assertion is also made that some Indians came from about Hudson Bay to Quebec in 1663, and that Sieur La Couture, with five men, proceeded overland to the Bay, possession whereof they took in the King's name. There is no account of this voyage in *Charlevoix* or in the *Relations* of the Jesuits; and the authority relied upon is the same as my learned friend relies on as being unfurnished for the Marquis de Denonville, to which I have already referred as being untrustworthy. Now, M. de Callieres, in his memoir, written in 1685, was 21 years after the time of which he writes. It is asserted in the memoir that Couture made that journey to the Hudson Bay for the purpose of discovery; and taking that in connection with the fact that the Governor of the Province is compelled to admit that they have no record in any shape to which they could refer, although they ought to have many, and when we come to what really took place in 1671, during Talon's administration, we find that it was then that the desire existed that some one connected with the French should go to the Hudson Bay and if possible make a discovery of it; and the design of putting all this forward in 1685 was to make the King of France and his Ministers believe that this country was then in the possession of the French. For what reason? Because in 1682 they had gone to that territory, had taken possession of the forts built and set up by Gillam and others on behalf of the Hudson Bay Company, and had destroyed property there; therefore it was necessary that they should account in some way for having gone into that territory and taken possession of it. Now, the next voyage claimed after that of Couture is the voyage of Sieur Duquet.

Chief Justice Harrison.—Before these periods there can be no doubt that some Frenchman had penetrated to Hudson Bay.

Mr. MacMahon.—Not one; not one. Fort Rupert was established in 1668; that was Gillam's fort. It is admitted on all hands that Gillam built the first fort of any account upon the Hudson Bay or anywhere in connection with it; this is not questioned by my learned friend. That fort was put up in the interest of Prince Rupert. I am merely going over the arguments of my learned friend in order to show on what a slight basis the historical statements have been built, and how willing the Province of Ontario has been to seize upon them as authentic documents, in order to prove that this territory was French. In 1663 Sieur Duquet, the King's Attorney for Quebec, and Jean L'Anglois, a Canadian colonist, are said to have gone to Hudson Bay by order of Sieur D'Argenson, and to have renewed possession by setting up the King's arms there a second time. By reference to page 129 of Mills' revised report, it will be seen that that order could not have been given by D'Argenson, because he had left Canada on 16th September, 1661, two years before this pretended order was given to Sieur Duquet; and there is ample authority for that in Shea's *Charlevoix*, vol. 3, p. 65, note 5 and p. 17. I have given the historical references here in order that if possible my learned friends might meet the statement that is made.

Hon. O. Mowat.—Would it not be convenient for my learned friend to answer the way in which Mills treats these things?



Mr MacMahon.—I do not think it is necessary, because Mills puts it on a ground that could hardly be maintained. If he were to look at it now, he would admit that there is not so much in it as he thought there was at the time. In a note on page 129 Mills says, "an attempt has been made, on the strength of certain passages in the Relations des Jesuites, to throw doubt on the authenticity of certain of the occurrences mentioned in the memoirs of M. de Callieres and the Marquis de Denonville. It is at all not likely that either of these—the one being Governor of Montreal, and the other Governor General of New France, having access to the official documents, and writing within a short time of the date of the events narrated—could by possibility be mistaken." Now, de Callieres was writing twenty-one years after the events. Denonville was writing 22 years after them, and relying upon the very identical memoir that De Callierie had written and which he said there was not a document to support. If there was not a document upon which they could rely, how is it possible that any reliance could be placed upon their statements just at that particular juncture, when it was necessary for them to find some argument upon which they could defend their having sent the French into Hudson Bay and destroyed these forts? For in 1686 the Marquis de Denonville had sent two or three companies of Frenchmen to Hudson Bay, and taken three forts in one year; and it was necessary that they should account for these transactions to the Government of France. I will show that the Hudson Bay Company were, at that very time, making representations to their Government in regard to the conduct of the French, and to the Grovverners of the French. I think that this is all I need say in regard to Sieur Duquet's voyage. The fact of d'Argenson having left Canada two years before his order is said to have been given to Duquet, shows that the whole thing was, if not a fabrication, a mistake. I am not going to say that it was a fabrication; I am not called upon to account for it in any way; I am only called upon to point out that there is no authority for it, and the whole circumstances go to show that it could not have transpired as it is set forth by the Governors at that day. There has been an egregious error committed in some way. That order could never have been given, because we have the most unmistakable evidence that d'Argenson was not in this country then. When we come to the voyage of Albanel and St. Simon in 1671, which we admit was made, we find in a letter of M. Talon to the King, dated Quebec, Nov. 2, 1671, these words:—"Three months ago I despatched with Father Albanel, a Jesuit, Sieur de St. Simon, a young Canadian gentleman recently honored by His Majesty with that title. They are to penetrate as far as Hudson Bay, draw up a memoir of all they will discover, drive a trade in furs with the Indians, and especially reconnoitre whether there be any means of wintering ships in that quarter." That is what they were to do; so that, if the French Government of the day had, prior to that, caused visits to be made to Hudson Bay, in the way in which they pretend some years after that to state, all that knowledge and information would have been acquired, and there would have been no necessity for sending a priest there in order to make that discovery. If those statements of the earlier alleged voyages had not been made by the duly constituted authorities of the Government of the country, I think this is almost all the answer it would be needful to make. But Father Albanel says, at page 56 of the Relations for 1672:—"Hitherto this voyage had been considered impossible for Frenchmen, who, after having undertaken it already three times, and not having been able to surmount the obstacles, had seen themselves obliged to abandon it in despair of success. What appears as impossible is found not to be so when it pleases God. The conduct of it was reserved for me, after 18 years prosecution that I had made, and I have very sensible proof that God reserved the execution of it for me, after the signal favor of a sudden and marvellous, not to say miraculous, recovery that I received as soon as I devoted myself to this mission, at the solicitation of my superior; and, in fact, I have not been deceived in my expectation. I have opened the road in company with two Frenchmen and six savages." This shows that so far as the Jesuits were concerned, the pioneers of the country, they had never heard of any one having penetrated to Hudson Bay before then. The very letter that Mr. Tallon was writing to the King shows that he had

never heard of anything of the kind. There is no doubt, therefore, that Albabel's voyage was the first effort successfully made to reach Hudson Bay.

Hon. O. Mowat.—M. Talon says, also, in that letter to the King, that those countries were originally discovered by the French.

Mr. MacMahon.—That is the way in which these accounts were made up; but it is evident that the French had not been in Hudson Bay, and did not know whether it would winter ships or not.

Hon. O. Mowat.—M. Talon says that he directed St. Simon to take renewed possession of it.

Mr. MacMahon.—It was not necessary to take renewed possession if they were in possession already, as it is now claimed that they were. There is not a record in existence which will substantiate the claim then made as to former possession. In December, 1711, the Hudson Bay Company presented a petition to Queen Anne, in which they set forth that the French, in time of perfect peace between the two kingdoms, in 1682, arbitrarily invaded the Company's territories at Fort Nelson, burned their houses and seized their effects; that in the years 1684 and 1685 they continued their depredations; that in the year 1686 they forcibly took from the Company Albany Fort, Rupert, and Moose River Fort, and continued their violent proceedings in 1687 and 1688; and the Company lay the damages at £108 514 19s. 8d. (Mills, 153.) It is not my intention to take up the time of the Arbitrators in referring to the English discoveries. A series of them will be found at pages 4 and 5 of the Dominion case. The voyages are those of Sebastian Cabot, in 1517; Sir Martin Frobisher, in 1576, 1577, and 1578; Hudson, 1608-10; Button, 1611; Luke Fox and Thomas James, 1631. Then we come to 1667 and 1668, when we find that des Grosellieres and Raddisson (who it is supposed were *Coueurs des Bois*) were roaming among the Assiniboines, and were conducted by them to Hudson Bay. These two men went to Quebec after their return for the purpose of inducing the merchants there to conduct trading vessels to Hudson Bay. At page 280 of the Ont. Docs. we have the whole transactions during that period fully set forth by the Hudson Bay Company, just as they transpired. The proposal of des Grosellieres and Raddisson was rejected, as the project was looked upon as chimerical by the Quebec merchants. Now, if Attorney-General Bourdon, the Attorney-General of the Province, had been there 12 or 14 years before, and made known what his discovery was and how he got there and returned from there, it would not have been stated by the merchants of Quebec that the project was chimerical.

Hon. O. Mowat.—Nor did they state it. The document merely says that their project was rejected.

Mr. MacMahon.—I will furnish you with the authority for stating that the project was looked upon as chimerical. I think you will find it in Mr. Mills' book. Des Grosellieres was in London in 1667, but before going there he had been in Boston and in Paris, endeavoring to get merchants to assist in reaching Hudson Bay by ships. He wished them to fit out an expedition for that purpose, but they refused to join in the undertaking, and he was then referred to the British Ambassador at the Court of Paris, who advised him to go to London. He went there, and those who afterwards obtained the patent from Charles II of the Hudson Bay Company, employed des Grosellieres and Radisson with Gillam, who went there and built Fort Rupert, in 1667 or 1668. Then Captain Newland was sent out in 1669 by the same parties who sent out Gillam. So far as the Hudson Bay Territory is concerned, the English were first, both as to discovery and occupation. It is stated in Mills' book, and not denied, that as long as the English were not there the Indians came to Montreal and Quebec and Three Rivers. The whole of the trade was done between Fort Frontenac (Kingston) and Quebec by the Indians themselves; and with the exception of the *Coueurs des Bois*, who went into the country some hundred miles, there was no pretence of the French to penetrate into the interior. But as soon as the English commenced occupying the Hudson Bay Territory, as soon as they were intercepting and taking possession of the trade that had formerly belonged to the French mer-



chants, then those who were interested took steps to secure at Hudson Bay the trade which the English were intercepting. The memoirs are full of statements as to the venality of those connected with the French Government in Canada. It is stated that the Governors General themselves were in league with certain merchants and traders for the purpose of getting possession of as much of the trade as they possibly could, and that none except certain favored individuals could get licenses from the Governors. The people stated themselves that they were persecuted by the emissaries of the Government, who sought to prevent them going into the interior; and thus the Coureurs des Bois were prevented from going into the interior of the country, and cutting off the trade which would otherwise have gone to Montreal, and which the officials were bound to participate in if they could. That is the reason why the French Governors here thought it necessary to send these memoirs to the Court of France. Now, having found the English making discoveries, entering into possession, and building forts upon Hudson Bay, the question suggests itself, a question which ought to be determined, what extent of territory the King of England as represented by the Hudson Bay Company, or the discoveries of that Company, what extent of territory the King of England was entitled to by this discovery, possession and occupation? I do not think there can be a doubt about it. Most of the authorities on the point are referred to on page six of the Dominion case. It is laid down in Vattel, that "navigators going on voyages of discovery, furnished with a commission from their Sovereign, and meeting with islands or other lands in a desert state, have taken possession of them in the name of their nation; and this title has been usually respected, provided it was soon after followed by real possession." Here we have these people sent out under the sanction of the King and of Prince Rupert, to make a discovery of Hudson Bay. They did make that discovery and entered into possession; and I am going to show to the Commissioners, no matter what the occupation was, that under the law of nations as interpreted then and since by the highest authorities, they were entitled to the whole of the lands watered by the streams flowing into Hudson Bay and James' Bay; and more than that, it will be apparent that the Hudson Bay Company and the English Government were claiming that the whole of these lands belonged to England. Vattel says, also: "When a nation takes possession of a country, with a view to settle there, it takes possession of everything included in it, as lands, lakes, rivers, &c." The next authority I shall quote is Phillimore. He says: "In the negotiations between Spain and the United States respecting the western boundary of Louisiana, the latter country laid down with accuracy and clearness certain propositions of law upon this subject, and which fortify the opinion advanced in the foregoing paragraphs. 'The principles (America said on this occasion) which are applicable to the case are such as are dictated by reason and have been adopted in practice by European powers in the discoveries and acquisitions which they have respectively made in the New World. They are few, simple, intelligible, and, at the same time, founded in strict justice. The first of these is, that when any European nation takes possession of any extent of sea coast, that possession is understood as extending into the interior country to the sources of the rivers emptying within that coast, to all their branches, and the country they cover, and to give it a right, in exclusion of all other nations to the same. (See *Memoire de l'Amérique*, p. 116.) It is evident that some rule or principle must govern the rights of European Powers in regard to each other in all such cases; and it is certain that none can be adopted, in those to which it applies, more reasonable or just than the present one. Many weighty considerations show the propriety of it. Nature seems to have destined a range of territory so described for the same society to have connected its several parts together by the ties of a common interest, and to have detached them from others. If this principle is departed from it must be by attaching to such discovery and possession a more enlarged or contracted scope of acquisition; but a slight attention to the subject will demonstrate the absurdity of either. The latter would be to restrict the rights of an European power who discovered and took possession of a new country to the spot on which its troops or

ettlement rested—a doctrine which has been totally disclaimed by all the powers who made discoveries and acquired possessions in America.” (Phillimore's Intl. Law, 2 ed., Vol. I., pp. 277-8-9.)

I wish to draw the Arbitrators' particular attention to this expression in regard to restricting the rights of European powers, etc., to the spot on which troops or settlement rested, because in dealing with the Treaty of Ryswick the argument has been advanced that all which was left to the English after that treaty was the settlements in the immediate neighborhood of the fort or two which was then in their possession—that is, the territory immediately round about, and nothing more; although, as I will afterwards show, I do not think that the Treaty of Ryswick has anything to do with the discussion of this case. At page 223 in the discussion of the Oregon Question, Dr. Twiss says: “In the negotiations antecedent to the Treaty of Utrecht, it was expressly urged in support of the British title to the territories of Hudson Bay that M. Frontenac, then Governor of Canada, did not complain of any pretended injury done to France by the said Company's settling, trading and building forts at the bottom of Hudson Bay, nor made pretensions of any right of France to that Bay till long after that time.” (Anderson's History of Commerce, A.D. 1670, Vol. 2, page 516.) He goes on to say: “In other words, the title which this charter created was good against other subjects of the British Crown by virtue of the charter itself.” Now, that is what Dr. Twiss lays down as a proposition which he says cannot be controverted. That as regards the title created by the charter, it was good against other subjects of the British Crown by virtue of the charter itself; so that in virtue of what has taken place within the last few years, it must be good as against the Province of Ontario. He continues: “But its validity against other nations rested on the principle that the country was discovered by British subjects, and at the time of their settlement was not occupied by the subjects of any other christian Prince or State; and in respect to any special claim on the part of France, the non-interference of the French Governor was successfully urged against that power as conclusive of her acquiescence.” Now, that is laid down by Dr. Twiss, and it is a proposition which has been assented to by Phillimore in the quotation just read. The quotation which was made use of by my learned friend the Attorney-General from Twiss's Oregon, was not attempted to be controverted by the English authorities at the time of the Oregon difficulty. Now, Mr. Mills, at page 182 of his report, says. “It can hardly be contended that because the Hudson Bay Company had established certain posts and forts at the mouths of some of the rivers that empty into the Bay, they could rightfully claim all the country drained by those rivers and their tributaries. A pretension of this kind was put forward by the United States to the whole of Oregon, because of the discovery of the Columbia River by Capt. Gray, but it was expressly repudiated at the time by Great Britain. No such rule is recognized by writers on international law.” Now, the rule of law, as recognized by international writers and Great Britain, was different from that put forward by Mills. What was stated by Twiss, and what is asserted here, is that it depended upon other considerations.

Sir Francis Twiss, in his discussion on the Oregon question, at page 309, states that “Great Britain never considered her right of occupancy up to the Rocky Mountains to rest upon the fact of her having established factories on the shores of the Bay of Hudson, i.e., upon her title by mere settlement, but upon her title by discovery confirmed by settlements in which the French nation, her only civilized neighbor, acquiesced, and which they subsequently recognized by treaty.”

That is the ground upon which Dr. Twiss puts it, and it is the groundwork of the whole international law, as stated by Phillimore in the quotation that I have already read. The principle is stated in Vattel, in the reference I have made, is fully recognized by Great Britain and the United States, and is fully assented to by Twiss and Phillimore. In reference to the middle distance, my learned friend quoted from Twiss, page 148. At pages 173 and 177, Twiss treats of this middle distance in regard to this very territory. He says: “Again, in the case of a river, the banks of which are possessed by certain States, since a river is *communis juris*,



the general presumption, &c., &c." (Reads the extract). Now, here we have taken possession of the sea coast, so that the question of middle distance, or reaching the territory by another route, cannot come in question at all, because, as contended by the United States and Great Britain in the discussion of this question, they have always claimed, and the Hudson Bay Company have always claimed, that the territorial rights extended to the height of land on all sides; and I will point out to the Commissioners that as early as 1709, before the Treaty of Utrecht, the Hudson Bay Company were claiming, on the east and the south, the very line that ran from Grimington's Island down through Lake Mistassinne. Now, it is necessary to look at the Company's grant in different aspects. It will be found in Ontario Documents, pages 29, 30. What does the King grant to the Hudson Bay Company under the name of Rupert's Land? First is granted the sole trade and commerce of all those seas, bays, lakes, rivers, creeks, etc. Then the Company are created the absolute lords and proprietors of the same territory, limits and places, etc., etc. in free and common socage, with power to erect colonies and plantations, &c., so that here was a proprietary government created by the charter. You will see by the charter that they had the power to adjudge, to create colonies—the power to do everything apparently, which any government ought to be called upon to do. And I refer to the fact of its being a proprietary government, because it will be necessary to consider that in relation to the bounds which my learned friend the Attorney-General says could be created by the King, notwithstanding that the boundaries might have been limited by the Act of Parliament. The charter is very wide; although Sir Vicary Gibbs, who gave an opinion in 1804, thought the charter void because it purports to confer upon the Company exclusive privileges of trade. He does not say anything about the proprietary rights; he does not say anything about the right of the King to grant a charter the same as was granted in Pennsylvania; he does not say anything about the right to make a territorial grant; he merely gives the opinion that the charter is invalid because it grants exclusive privileges of trade, and thereby creates a monopoly, which they say the King could not grant without the sanction of Parliament. The next opinion, in point of time, is that of Sir Arthur Pigott, Sergeant Spankie and Lord Brougham, 1816, and the next one is that of Edward Bearcroft, in 1818. In these two opinions they do not for a moment say that the charter is invalid, but they say that the Crown had no right and could not of itself create a monopoly, and, therefore, as to that part of the charter it might be invalid; but, as to the rest of the charter, they say the only part of it to which a question could be raised was in regard to the extent of territory covered by the charter itself. I think I will be able to show the Commissioners that the charter was always considered by the British Government as extending to the full length asserted now by the Dominion, and as was asserted by England shortly after the Treaty of Utrecht. Now, the Attorney-General urged with a great deal of force that the opinions given by the law-officers of the Crown in 1850 and 1857 were given upon statements furnished by the Hudson Bay Company, which were *ex parte*, and that therefore, we are not bound by these opinions. I do not pretend that we are bound by these opinions; that is not asserted by the Dominion; but it puts the Province of Ontario into a position which I think the Province is not able to get out of, from the very fact of these proceedings having been instituted, and that the law-officers of the Crown stated at that time that the Hudson Bay Company were entitled to everything that they claimed; and I am going to point out to the Commissioners what the claims were, and upon what these claims were based. The claim as furnished by the Hudson Bay Company will be found in full in Ont. Docs., page 288-90. That claim was founded upon what? Upon a document prepared by the Crown itself, and furnished to these very people as the title upon which they were to rely; and the law officers of the Crown, looking at that document, at the charter itself, could see for themselves, and were giving an opinion in regard to a legal document. Now, the Company import into their statement a part of the charter, and set out by saying in the words of the charter what the King has granted them; and then they say that they

have "always claimed and exercised dominion as absolute proprietors of the soil in the territories understood to be embraced in the terms of the grant, and which are more particularly defined in the accompanying map." The map is an exact counterpart of what was used in 1857, and in that map is set forth all that they claim.

Chief Justice Harrison.—Each time that they were called upon to give their claim they appear to have extended their boundaries.

Mr. MacMahon.—They were determined to claim enough; like my learned friend, who started out with the line of the Rocky Mountains; they furnished that claim to the grantors under the charter; they were furnishing that claim to the Crown, and it was submitted to the Crown officers, who gave an opinion in regard to it, and that opinion I have had copied in the Dominion case, at page 7. It was given by Sir John Jervis and Sir John Romilly—one Chief Justice of the Common Pleas, and the other Master of Rolls. In that opinion, which is addressed to Earl Grey, they say, "in obedience to Your Lordship's command, we have taken these papers into consideration, and have the honor to report that, having regard to the powers in respect to territory, trade, taxation and Government, claimed by the Hudson Bay Company, in the statements furnished to Your Lordship by the Chairman of that Company, we are of opinion that the rights so claimed by the Company do properly belong to them. Upon this "subject we entertain no doubt." The Commissioners will see that that map is attached to the correspondence and papers; and all these papers were brought down in 1850 to the House of Commons on a Return then ordered; and it shows the correspondence that took place between Mr. Isbister, who was representing those who felt themselves aggrieved—I do not know whether representing a Government or private parties.

Chief Justice Harrison.—He was not acting for any Government; he was acting as an individual.

Mr. MacMahon.—He was acting for some people who claimed to have rights in the Hudson Bay; and the correspondence took place in respect to the charter, the extent of territory, and the trade, taxation and Government as claimed by the Hudson Bay Company.

Sir Edward Thornton.—I should suppose that Mr. Isbister represented the people in Assiniboine—the dissatisfied people in the Red River settlement.

Chief Justice Harrison.—Yes; certainly he did not represent any Government. He was one of the first to rouse public opinion about the monopoly both here and in England.

Mr. MacMahon.—I showed the letters and papers attached to the map to the Attorney General, but we concluded that it was not necessary to have them printed, as part of them appear in the Ontario documents. The letter I will now read is addressed to Mr. Isbister, dated April 13, 1850, and will be found at pages 12 and 13 of the Hudson Bay Company's documents:—

DOWNING STREET, 30th April, 1850.

"Sir,—In answer to your letter of the 16th of this month, I am directed by Earl Grey to state to you, with as much distinctness as possible, since there appears to have been some misunderstanding on the subject, the course which Her Majesty's Government have adopted and propose to pursue relative to the charges against the Hudson Bay Company.

"2. In pursuance of the Address of the House of Commons, praying Her Majesty to take such means as might seem most fitting and effectual to ascertain the legality of certain powers claimed by that Company, Lord Grey called on the Company for a statement of those claims, and laid it before the Attorney and Solicitor-General for their opinion. You are acquainted with their opinion, which was to the effect that the rights so claimed by the Company properly belonged to them.

"3. They added a suggestion that yourself or any other party dissatisfied with their opinion might be recommended to prosecute complaints against the Company by means of a petition to the Queen, which might be referred to the judicial or some other Committee of the Privy Council.



"4. This offer was accordingly made to yourself. You now appear to suppose that Her Majesty's Government, in making the offer, intended to defray, out of the public funds, the expense which must attend such an investigation.

5. This, however, Her Majesty's Government cannot consent to do, having been advised by their own law officers that the claims of the Company are well founded, they cannot impose on the public the expense of proceedings which, in the opinion of their own regular advisers, will prove ineffectual. All that is in their power is to recommend that those who are dissatisfied with that opinion should pursue the course pointed out by the law advisers for questioning it, and to assist as far as they may lawfully do in having the question so raised brought to a legal determination.

"6. But the expense of the steps necessary for this purpose must be borne by the parties who undertake them, and if none of those who have brought under the notice of Lord Grey and of Parliament their exceptions to the jurisdiction and power claimed by the Company are willing to incur such expense, Her Majesty's Government must consider that there are no further steps which it is in their power to adopt for the purpose of ascertaining the legal validity of the claims of the Company."

Now, here was the British Government being informed by their own legal advisers that any steps which they might take in order to test the territorial rights, which I suppose it was designed to test by anything that might go before the Privy Council, would be ineffectual; and here, at that early date, Mr. Isister, who was moving either on behalf of himself or somebody interested was told that the Government would not assume any responsibility. And we are told in 1850 that the only way of testing the validity of that charter or the extent to which the rights of the Company might be narrowed down, was by the legal interpretation to be put upon it by the Privy Council. Neither then nor in 1857 did Canada think it proper to test in any way, particularly as suggested by the law officers of the Crown on both of these occasions, the validity of that charter. Following that, there was further correspondence. In 1850, Sir John Pelly, who was then Governor of the Hudson's Bay Co., had written to Lord Grey. The following is an extract from his letter, dated at the Hudson Bay House, 31st May, 1850: "Permit me at the same time to state that the Company's ships for Hudson Bay are appointed to sail on the 8th June, and that it would be of the utmost importance if the decision of the Privy Council on the rights and privileges of the Company were sent out by that opportunity, and the Government directed to issue a proclamation agreeable to the tenor of the decision, which would in my opinion greatly tend to allay the excitement in which a portion of the half-breed inhabitants have been kept." Now, there the Governor of the Hudson Bay Company invites Her Majesty's Government to have it decided and to have the excitement allayed. The reply of Lord Grey will be found at page 8 of the Dominion case. After pointing out what had been done, Mr. Hawes says that a petition to Her Majesty was suggested: and he goes on to say: "Such a Petition was, therefore, essential to the complete prosecution of the inquiry; Lord Grey accordingly gave to certain parties in this country, who had taken an interest in the condition of the inhabitants of the Hudson Bay Company's Territories, and had questioned the validity of the Company's charter, an opportunity to prefer the necessary petition if they were so disposed; but, for reasons which it is unnecessary to repeat, they respectively declined to do so. Lord Grey having, therefore, on behalf of Her Majesty's Government, adopted the most effectual means open to him for answering the requirements of the Address, has been obliged, in the absence of any parties prepared to contest the rights claimed by the Company, to assume the opinion of the law-officers of the Crown in their favor to be well founded."

Now, Lord Grey at that time was Colonial Minister, and he, on behalf of Her Majesty's Government was obliged to assume that the opinion of the law officers of the Crown in favor of the Hudson Bay Co., was well founded, and Her Majesty's Government refused to interfere any further with it, as they were perfectly right in doing.

Chief Justice Harrison.—These questions, however, were all questions as to certain rights more than questions as to boundary.

Mr. MacMahon.—The trade, taxation and territory were all included.

Chief Justice Harrison.—But the question as to the boundary really never came up, because the persons who were attacking the Hudson Bay Co. said that the Company had no right to any part of the territory. If the question of boundary had come up, they must have looked to the Quebec Act and to these other Acts. It was not a question of boundary at all; it was a question of whether the Company had any rights.

Mr. MacMahon.—They were claiming certain rights, and a certain territory as being covered by those rights. The whole of it went in altogether.

Chief Justice Harrison.—There was no opinion from the law officers of the Crown as to the boundary.

Mr. MacMahon.—They claimed those boundaries; their own position supplied boundaries. In 1857 the very same question came before Sir Richard Bethell; and as reference has been made to the distinguished lawyers who gave opinions on the other side, I may say that I presume Sir Richard Bethell's opinion as Attorney General would be authority as high as could be got from any source in regard to what was covered by that charter.

Sir Edward Thornton.—I do not see that there can be the least doubt that the complaints made in 1850 were from Winnipeg, from the same people who were dissatisfied for a great number of years with the Hudson Bay Co.

Hon. O. Mowat.—Half-breeds, chiefly.

Mr. MacMahon.—Then in this case the question as to territory, as to that portion of the territory at least, must have got before the law officers of the Crown in some way.

Chief Justice Harrison.—These people at Red River said the Hudson Bay Co. had no rights in any part of this territory, and the law officers were against them.

Mr. MacMahon.—We have not the petition presented to the House of Commons, But if Mr. Isbister was acting on behalf of those who were known as the Red River settlers, and if he was their representative, then as far as regards the territory that they were disputing, as being controlled by the Hudson Bay Co. when they had no right to control it at that time, that must have been a question the law officers considered and in regard to which they gave an opinion.

Chief Justice Harrison.—The Attorney-General for the sake of this argument admits that the Hudson Bay Co. had some rights, but that as a matter of boundary they did not extend to certain points.

Mr. MacMahon.—The question of boundary must have been considered in regard to that territory, as to whether the Hudson Bay Company were exercising rights outside of the boundary that they were claiming under the charter.

Chief Justice Harrison.—The case was not put on that ground. The higher ground was taken that the Company had no right there at all.

Sir Edward Thornton.—If I am not mistaken, the territory of Assiniboia was granted to the Earl of Selkirk; it is marked upon this map as the territory of Assiniboia.

Mr. MacMahon.—Yes; in 1857 the Arbitrators will remember that that was after a lengthened investigation had been gone into by the House of Commons, when Chief Justice Draper was acting as Agent for Canada.

Sir Edward Thornton.—That is the first time that Canada as a country appeared in the matter at all; I mean the late Province of Canada.

Mr. MacMahon.—Yes. When Chief Justice Draper went to England as the Agent of Canada, the whole matter then as to the rights of the Company was supposed to have received very close attention by the home authorities, and the strongest possible arguments were adduced by the Agent of the Province, in order to curtail the rights of the Hudson Bay Company territorially; and at that time the law officers of the Crown, Sir Richard Bethell and Solicitor-General Keating, were asked for an opinion; the whole of which is in Ont. Docts., 200, 201. In that opinion, they say:—"That the validity and construction of the Hudson Bay Company's charter cannot be considered apart from the enjoyment which has been had under it



during nearly two centuries, and the recognition made of the rights of the Company in various acts both of the Government and the Legislature." In their statement of rights the Hudson Bay Company say in 1850:—"It may be right here to mention that although the original title to the territory and trade in question was derived under the charter above referred to, the rights of the Company have in various instances received the recognition of the Legislature."

Chief Justice Harrison.—Just confirming what I said; the whole dispute was as to the rights of the Company, not the boundary.

Mr. MacMahon.—They also say:—

It may be right here to refer to several Acts of the Legislature which have recognized the general rights and privileges claimed and exercised by the Company:—

An Act passed in the sixth year of the reign of Queen Anne, c. 37, intituled, "An Act for the Encouragement of the Trade to America," and this Act contains an express proviso, that "nothing therein contained shall extend or be construed to take away or prejudice any of the estates, rights or privileges of, or belonging to the Governor and Company of Adventurers trading into Hudson's Bay."

In like manner, in 1745, when an Act was passed (18 Geo. 2, c. 17) for granting a reward for the discovery of a north-west passage through Hudson Straits, it was expressly provided, that nothing therein contained should extend or be construed to take away or prejudice any of the estates, rights or privileges of or belonging to the Hudson Bay Company.

One of the contentions in regard to the rights and privileges of the Hudson Bay Company was that they had not fulfilled the intent of their charter—that they had not been making any endeavors to discover a passage to the North Pole; that if the charter was ever valid they had forfeited it by not fulfilling certain conditions. I refer to that to show that during all that time their rights and privileges were being expressly accepted and held valid by these Acts of Parliament during the reigns of Anne and the Georges—so that they were not to be infringed upon in any way—and that they had been recognized up to the very day when Rupert's Land was surrendered by the Hudson Bay Company to Her Majesty.

At this point the Arbitrators adjourned, at five o'clock, until ten o'clock next morning.

SATURDAY, 3rd August, 1878.

Arbitrators and Counsel all present.

Chief Justice Harrison.—Before proceeding with the argument I would state—without having any desire whatever to unduly hurry the argument—that if there is any probability of its being concluded by one o'clock or so, there is a prospect of the Arbitrators being able to agree this afternoon.

Hugh MacMahon, Esq., Q.C.—I will shorten my argument very much. Before commencing in the regular course of the argument, I wish to refer to that matter of Radisson and des Grosellieres. In the printed case the word "chimerical" is used to express the way in which the merchants of Quebec looked upon the statement of these men. My learned friend the Attorney General said, that that was a statement of Mr. MacMahon. I thought that that statement would be found in Mills' book, but I see that I am mistaken in that; the statement is to be found in Harris' Travels, p. 286, vol. 2. (Reads the passage.) So that it was not a statement of my own.

Hon. O. Mowat.—The authority is then less than that of my learned friend would be.

Mr. MacMahon.—Not at all.

Chief Justice Harrison.—The difference is that Harris is not an advocate.

Mr. MacMahon.—Harris is about the best authority that we could get for the statement; his work was published in 1760. I was referring the Arbitrators last evening to the opinion delivered by Sir Richard Bethell, afterwards Lord Westbury, and Sir Henry S. Keating, delivered in 1857; Ont. Docts., 200, 201. It will be remembered that at that time the whole evidence and all the correspondence that could be got together in regard to this question had been submitted to the Committee

of the House of Commons, and, therefore, the law officers of the Crown were fully advised of everything that could be brought to bear upon the subject; and I may say here, as the matter was referred to by the Hon. Chief Justice yesterday, that although perhaps the question of boundary did not come up as a square issue at that time nor in 1850, still the question of boundary must have arisen incidentally when each of these opinions was given; so that the law officers of the Crown at that time were dealing incidentally with the question of boundary, and they could not avoid dealing with it in some way. They say:—

"We beg leave to state, in answer to the questions submitted to us, that in our opinion the Crown could not now with justice raise the question of the general validity of the charter, but that, on every legal principle, the Company's territorial ownership of the lands and the rights necessarily incidental thereto (as, for example, the right of excluding from their territory persons acting in violation of their regulations) ought to be deemed to be valid."

They likewise say:—"Nothing could be more unjust, or more opposed to the spirit of our law, than to try this charter as a thing of yesterday, upon principles which might be deemed applicable to it if it had been granted within the last ten or twenty years." In another part of the opinion, they say:—"The remaining subject for consideration is the question on the geographical extent of the territory granted by the charter, and whether its boundaries can in any and what manner be ascertained." That is the question they were discussing. "In the case of grants of considerable age, such as this charter, when the words, as is often the case, are indefinite or ambiguous, the rule is that they are construed by usage and enjoyment, including in these latter terms the assertion of ownership by the Company on important public occasions, such as the Treaties of Ryswick and Utrecht, and again in 1750." Now, they point to these three different periods as points of time in order to ascertain what ought to be the boundaries allowed to the Hudson Bay Co., in 1857, and show that the enjoyments under that charter, the assertion of rights under that charter, and the claims made by virtue of the charter itself, must and ought to be taken into consideration when dealing with the question; and the law officers, in giving that opinion, dealt with it in that view. The Treaty of Ryswick I will only refer to very shortly. The Attorney-General, in his argument yesterday, referred to the forts that had been taken by the French, and to the effect of the Treaty of Ryswick in regard to the possession of these forts. But although the question is somewhat discussed at page nine of the printed case, I do not think it necessary that I should elaborate it at all, because in 1857 Chief Justice Draper, acting as agent on behalf of Canada, stated what was in effect in a very few words his view of the Treaty of Ryswick; and that was this: "The eighth article of the Treaty of Ryswick shows that the French at that time set up a claim of right to Hudson Bay, though that claim was abandoned at the Peace of Utrecht, and was never set up afterwards." Ont. Docts., page 240. So that at the Peace of Utrecht—and this is nearly the last stage in the argument—any rights that the French might or could have had were abandoned in 1713, and at one bound we get to what was the position of the Government of Great Britain and the Hudson Bay Co. at that time. It is stated at a certain time in 1700 that the Company were willing to contract their limits, and the statement is made because that they were precluded at a later date from setting up that they were entitled under the charter to all that the charter could give them. What do they say in 1700—about the earliest date at which they made a claim after the Treaty of Ryswick? They say: "We are willing to contract our limits, but although we are willing to do that we are entitled of right to the whole Bay and Straits of Hudson." This is like a man who has a suit of ejectionment, who in order to avoid the expense and trouble of a law suit says: "I will be willing to allow you certain bounds, but if you do not accept that I will insist on getting all my rights and all that I am entitled to." Then there was another statement made at that time to the Lords of Trade and Plantations, in January, 1701, when the Hudson Bay Company again insist on their rights to the whole Bay and Straits, but are willing to forego their rights to a certain extent if by that means they can secure a settlement. "But should the



French refuse the limits now proposed by the Company, the Company think themselves not bound by this, or any former concessions of the like nature, but must, as they have always done, insist upon their prior and undoubted right to the whole Bay and Straits of Hudson, which the French never yet would strictly dispute, or suffer to be examined into (as knowing the weakness of their claim), though the first step in the said article of Ryswick directs the doing of it." (Ont. Docts., pp. 124-5.)

In May, 1709, the Company were requested by the Lords of Trade and Plantations to send an account of the encroachments of the French on Her Majesty's Dominion in America within the limits of the Company's charter; to which the Company replied, setting forth their right and title, and praying restitution. (Mills, pp. 152-3).

A further petition was sent by the Hudson Bay Company to the Queen, in 1711. (Ont. Docts., pp. 126-7).

On February 7th, 1712, the Hudson Bay Company set forth what they desired should be stipulated for them at the ensuing treaty of peace. (Ont. Docts., 128).

In this memorandum, the Hudson Bay Company ask "that a line be supposed to pass to the south-westward of Grimington Island, or Cape Perdrix, to the great Lake Miskosinke, at Mistoveny, dividing the same into two parts (as in the map now delivered), and that the French nor any others employed by them shall come to the north or north-westward of the said lake, or supposed line, by land or water." I believe that the plan now produced is marked as having been prepared in 1709. I refer the Arbitrators to it. There is the Island of Grimington, and they ask that a line be drawn through that lake until it passes south to the 49th parallel; showing that at that time, in 1712, when they were presenting their petition to Queen Anne, that is what they were claiming as their rights at that time. I do not intend to refer to the question of *post limini* at all, because the assent of Chief Justice Draper prevents the necessity of our having to discuss that question. Now, Lord Dartmouth's letter after the Treaty of Utrecht, addressed to the Lords of Trade and Plantations on May 27, 1713, will be found in Ont. Docts., 129. He says:—

"MY LORDS AND GENTLEMEN,—The Queen has commanded me to transmit to you the enclosed petition of the Hudson Bay Company, that you may consider of it and report your opinion, what orders may properly be given upon the several particulars mentioned. In the meantime I am to acquaint you that the places and countries therein named, belonging of right to British subjects, Her Majesty did not think fit to receive any Act of Cession from the French King, and has therefore insisted only upon an order from that Court for delivering possession to such persons as should be authorized by Her Majesty to take it; by this means the title of the Company is acknowledged, and they will come into the immediate enjoyment of their property without further trouble."

Now, the object of that will be seen when we consider that the whole course of these negotiations had been impeded by the French Ambassadors claiming that the word "cede" should be used, whilst the English Ambassadors refused to accept it with the word "cede" used at all; they insisted on the word "restored." They said that the territory was being restored to them; claiming that the French never were there, never had a right to be there, and therefore could not cede it, for it was not theirs to cede; but the Hudson Bay Company, the word "restore" was the proper word to use; and a great deal of correspondence took place between the Ambassadors in regard to it. Under section 10 of the Treaty of Utrecht, the King of France was "to restore to the Queen of Great Britain, to be possessed in full right forever, the Bay and Straits of Hudson, together with all lands, seas, coasts, rivers and places situate in the said Bay and Straits, and which belong thereunto; no tracts of land or of sea being excepted, which are at present possessed by the subjects of France." In reference to the discussion just spoken of, Bolingbroke says: in March, 1713, that the truth is so evident, that the Plenipotentiaries of Great Britain at Utrecht, always

make a distinction between places that should be ceded and those that should be restored (Boilingbroke's correspondence, Vol. 3, 601). Then we come to the question of the extent of country. Mr. Mills, who prepared this case for the Province of Ontario, was compelled to admit that all was claimed for England under the treaty which possibly could be claimed, and that is an admission which my learned friends cannot get over.

Mr. Mills, at p. 159 of his report, after quoting the portion of the 10th section above referred to, says: "The words of the treaty just quoted and the attendant circumstances show that what was claimed by England and yielded by France was the Bay and the country upon its margin. Nevertheless, the language of the treaty did not make it impossible for England, if she were so disposed, to insist upon the possession of the whole country to the lands height. France, too, consented with reluctance to the use of the word 'restoration' instead of 'cession.'"

Now, what was England doing from the very time of the passing of the treaty, from the very time when Commissioners were appointed?—I will show that she commenced to claim, and that she did claim in 1730, the restitution of these lands to the Company itself, because Lord Dartmouth says that the order was required so that the company might be placed in possession; and England went on claiming to the very height of land, and she insisted that France should send her subjects out of that country, or prevent them from building forts or places whereby they could trade in the Hudson Bay Territories. Although it is stated that Commissioners were appointed as provided by the treaty, it was in some way assumed that the boundary had been settled at the 49th parallel. Everybody seemed to be impressed with the idea that the 49th parallel had been settled by the Treaty of Utrecht. In the United States this was urged when the States were settling the parallel as to the northern boundary of Louisiana. It was claimed that the 49th parallel was settled at the Treaty of Utrecht, and that the United States, as the proprietors of Louisiana, were entitled to come up to that parallel as the territory of Louisiana. And in this country it was assumed, in a letter that will be found from the late Archbishop Strachan to Lord Selkirk, it is stated that the 49th parallel had been settled upon. In some way or other that seemed to be understood, and we find that many of the maps of very early date show that, as a reference to the list of the maps in the Ontario documents will show. Many of these maps have the 49th parallel upon them as being the bounds between the English and French possessions under the Treaty of Utrecht. There is no doubt it was assumed at that time that that was the parallel. It was insisted upon by the United States and not denied by Great Britain. The law officers of the Crown in Great Britain at that time seemed to have the idea, whether derived from maps or from what source I do not know, but they appear to have fully believed that the 49th parallel had been settled upon. The reason is, I suppose, because the Hudson Bay Company always assumed that the height of land was their southern boundary; and Mitchell's map will show that the height of land was about the 49th parallel, and, therefore, it was taken as if the 49th parallel was about the proper line to be drawn. Now, whether that was the case or not, whether it was ever agreed upon or not, is of very little importance.

Hon. O. Mowat.—You admit that it was not, I suppose.

Mr. MacMahon.—Oh, I admit that it was not; it was never decided upon, and in fact France never intended it. It is stated in Anderson's history that France never desired to settle the boundaries at all under the Treaty of Utrecht, and it was only when she was compelled after the war of 1759 that any settlement could be got. But it matters very little just now. If the Commissioners will look at the map attached to the Dominion case, which was furnished at the time of the surrender of Quebec—and that is taken from the map that was sent over by General Amherst to the British Government, furnished to General Haldimand by the Marquis de Vaudoueil—they will find there what France was claiming. She never claimed anything beyond the Red Lake. There never was any pretence, as far as France was concerned, of claiming as Canada anything north or west of the Red Lake. That is



what the Marquis de Vaudreuil at that time considered was the boundary of Canada upon the north and the west.

(Some conversation took place over the maps, in the course of which Chief Justice Harrison pointed out that there were two Red Lakes.)

Hon. O. Mowat.—It is a little south of Turtle Lake.

Mr. MacMahon.—It is hardly south; it is more west than south; but for the purposes of my argument it does not matter, because I am addressing myself to that part of the argument of the Attorney-General which lays claim to all that north and west country as belonging to the French and being part of New France. The map shows that there never was any such claim; and the correspondence which too plainly places with regard to the boundaries shows that after that map was delivered in 1761 France was claiming, as being part of Louisiana, a large part of the territory that was ceded as part of Canada—claiming it as being part of the Illinois country. The correspondence shows how anxious the French Government, the French Administration of that day, was in regard to acquiring the territory south, or at least retaining the territory south, as part of Louisiana.

On the 18th August, 1761, M. de Bussy, the French Minister at London, furnished to Mr. Pitt, a memorandum upon the limits of Louisiana, which bore upon the limits of Canada, and ran thus:—

“ Sur les limites de la Louisiane. Pour fixer les limites de la Louisiane du côté des colonies Angloises et du Canada, on tirera une Ligne qui s'étendra depuis R. Pereido entre la Baye de la Mobile et celle de Pensacola, en passant par le Fort Toulouse chez les Alimabous, et qui, se prolongeant par la pointe occidentale du Lac Erie enfera la Rivière des Miamis, et par l'extrémité orientale du Lac Huron ira aboutir à la hauteur des Terres du côté de la Baye d' Hudson vers le Lac de l'Abitibis, d' où la Ligne sera continuée de l' Orient jusques et compris le Lac Supérieur.” (Pub. Rec., Off. Vol. 483.)

Now, Mr. Pitt, the Prime Minister of that time, states in an ultimatum which he forwarded to Mr. Stanley at Paris, the following definition of the boundaries of Canada, as set forth by M. de Vaudreuil: “ Canada, according to the line of its limits traced by the Marquis de Vaudreuil himself, when this Governor General surrendered by capitulation, the said Province to the British General, Chevalier Amherst, comprises on one side, Lakes Huron, Michigan and Superior, and the said line drawn from Lac Rouge, embraces by a tortuous course the River Ouabache (Wabash) up to its junction with the Ohio, and from there extends the length of this river inclusively until its confluence into the Mississippi.” Then on page 8 of the supplement will be found what was stated by the Duc de Choiseul when the map was shown to him by Mr. Stanley. Mr. Stanley's despatch says:—

“ The Duc de Choiseul complained that the bounds of Canada were laid down very unfavorably to France, in the description which your memorial contained, alledging (sic) that there had been disputes between the Marquis de Vaudreuil and the Governor of Louisiana with regard to the limits of their two Provinces, wherein the former, being the more able and the more active, had greatly enlarged his jurisdiction; he added, however, that though many such objections might be made, it had been the intention of the King, his master, to make the most full and complete cession of Canada, and that he consented in his name to those limits. I then produced the map you sent me, and it was agreed that this Province should remain to Great Britain as it is there delineated.” (Minutes of a Conference at Paris, September 2nd, 1761. Pub. Rec., Off. Vol. 483, France.)

So that was the Province as understood both by the French and English at that time; and according to the claim made, at that time, it had not any greater limit or any wider extent. In 1714 the Hudson Bay Co. sent a memorandum to the Lords Commissioners of trade and plantations, accompanied by a map in which they claimed that the eastern boundary should be a line running from Grimington Island through Lake Wiscosinke or Mistassinnie, and from the said lake by a line north-south-westwards into 49 degrees north latitude, as by the red line may more particularly appear, and that that latitude be the limit; that the French do not come to it

orth of it nor the English to the south of it. (Ont. Docts., 131, 132.) In 1719 Commissioners were appointed, and they set forth that "the French since the Treaty of Utrecht had made a settlement at the source of the River Albany, the Commissaries of His Britannic Majesty insist that the French shall quit the said settlement, and that the fort, if there be any such building, shall be given up to the Company of English Merchants trading in Hudson's Bay aforesaid."

"The said Commissaries further demand that the subjects of His Most Christian Majesty shall not build forts or found settlements upon any of the rivers which empty into Hudson's Bay under any pretext whatsoever, and that the stream and the entire navigation of the said rivers shall be left free to the Company of English Merchants trading into Hudson's Bay and to such Indians as wish to traffic with them." (Ont. Docts., p. 365.)

The Attorney-General stated that it was merely the freedom of the rivers which was required by the English Commissioners at that time. But Lord Dartmouth, in his letter to the Lords of Trade and Plantations, appeared to be anxious in regard to the property that the Hudson Bay Co. had acquired under their charter, and which he wished to be given back to them, in order that they might continue to occupy it.

Hon. O. Mowat.—This is not mentioned in the instructions that Lord Dartmouth gave; it was the motion of the Commissioners themselves.

Mr. MacMahon.—The Commissioners, I suppose, were instructed.

Hon. O. Mowat.—We have got the instructions.

Mr. MacMahon.—This is the demand they were making. They were insisting that the French should not continue there, and that they should give up all their settlements, and not trade or build forts, and that they should cease to occupy this country altogether. (The demand will be found in Ont. Docts., p. 365.) Sir Travers Twiss says in regard to that,—by the 10th Article, however, of the Treaty of Utrecht, the French King agreed to restore to the Queen (Anne) of Great Britain, "to be possessed in full right forever, the Bay and Straits of Hudson, together with all lands, as, sea coasts, rivers and places situate in the said Bay and Straits, and which long thereto; no tracts of land or sea being excepted which are at present possessed by the subjects of France. The only question, therefore, for Commissaries to settle were the limits of the Bay and Straits of Hudson, *coastwards*, on the side of the French Province of Canada, as all the country drained by streams entering into the Bay and Straits of Hudson were, by the terms of the Treaty, recognized to be part of the possessions of Great Britain."

"If the coast boundary, therefore, was once understood by the parties, the headwaters of the streams that empty themselves into the Bay and Straits of Hudson indicate the line which at once satisfied the other conditions of the treaty. Such a line, if commenced at the eastern extremity of the Straits of Hudson, would have kept along through the sources of the streams flowing into the Lake Mistassinnie and Abitibis, the Rainy Lake, in  $48^{\circ} 3'$ , which empties itself by the Rainy River into the Lake of the Woods, the Red Lake, and Lake Travers."

These are the bounds that Sir Travers Twiss places on the rights of the Hudson Bay Co., saying that all that extent of country, to  $48^{\circ} 30'$ , at which the sources of these rivers commence, of right belonged to the Hudson Bay Co. under the treaty, and that they could claim it and were claiming it under the Treaty of Utrecht. Now, speaking of Lake Travers, he says:—

"This last lake would have been the extreme southern limit in about  $45^{\circ} 40'$ , whence the line would have wound upward to the north-west, pursuing a serpentine course, and resting with its extremity upon the Rocky Mountains, in about 48th parallel of latitude. Such would have been the boundary line between the French possessions and the Hudson Bay district; and so we find that the limits of Canada, signed by the Marquis de Vaudreuil himself, when he surrendered the Province to J. Amherst, the Red Lake is the apex of the Province of Canada, or the point of departure from which, on the one side, the line is drawn to Lake Superior; on the other, 'follows a serpentine course southward to the River Oubache, or Wabash, and ending it to the junction with the Ohio.' This fact was insisted upon by the British



Government in their answer to the ultimatum of France, sent in on the 1st September, 1761, and the map which was presented on that occasion by Mr. Stanley, the British Minister, embodying those limits, was assented to in the French memorial of the 9th of September." (Historical Memorial of the Negotiations of France and England from March 26th to Sept. 20th, 1761. Published at Paris by authority). (Twiss' Oregon boundary, pp. 209-211).

"By the Treaty of Utrecht, the British possessions to the north-west of Canada were acknowledged to extend to the head-waters of the rivers emptying themselves into the Bay of Hudson; by the Treaty of Paris they were united to the British possessions on the Atlantic by the cession of Canada and all her dependencies; and France contracted her dominions with the right bank of the Mississippi. That France did not retain any territory after the treaty to the north-west of the sources of the Mississippi will be obvious, when it is kept in mind that the sources of the Mississippi are in  $47^{\circ} 35'$ , whilst the sources of the Red River which flows through Lake Winnipeg, and ultimately finds its way by the Nelson River into the Bay of Hudson, are in Lake Travers, in about  $45^{\circ} 40'$ ." (Twiss' Oregon, p. 226.)

I have not referred to any of the maps, for the reason, as stated by Sir Travers Twiss, that it was an impossibility at that time to get any correct maps; few or no surveys having been made in 1750, and that date is referred to in the opinion of Sir Richard Bethell and Sir Henry Keating. In 1750 the Hudson Bay Company were claiming as their bounds just what they were claiming in 1857. The claim of the Company in 1857 will be found in Mills, 176, 177. "The line to begin from the Atlantic Ocean on the east side of Grimington's Island, otherwise Cape Perdrix, in the latitude of  $58\frac{1}{2}$  on the Labrador Coast, and to be drawn from thence south-westward to the Great Lake Miscoosink, otherwise called Mistoseny, and through the same, dividing that lake into two parts, down to the 49th degree of north latitude, as described in the said map or plan delivered herewith, and from thence to be continued by a meridian line of the said latitude 49 westward." So that they have been claiming that all along; and as stated by Sir Richard Bethell and his associates, that is what ought to be taken into consideration in viewing the question. Now, I think I have gone over the whole of the ground as far as regards the treaties, and I have shown that no part of that territory to the north and the west ever belonged to France, nor was it claimed by France at the time of the cession of Canada to Great Britain in 1760. In fact, the French wanted to contract the limits and to claim as part of Louisiana that which in 1760 the Marquis de Vaudreuil had marked out as the limits of Canada; and there was no pretence, no claim of any kind made by France to the northerly and westerly limit when she could have made the claim if it was in her power to do so. The other point to which I am drawn is in reference to the Quebec Act.

Sir Francis Hincks.—The learned counsel has been going for a long time upon the respective claims of the French and English; but it is an important thing to see what the English Government has done with regard to the boundaries since the whole territory became English. That is what we want to see particularly.

Mr. MacMahon.—The proclamation of 1763 created four separate governments—Quebec, East Florida, West Florida and Grenada, and provided that all the lands not within the limits of these governments and not within the limits of the territory granted to the Hudson Bay Company should be received for the present under the royal protection and dominion for the use of the Indians.

Hon. O. Mowat.—The old Province of Quebec is marked on the map in accordance with the proclamation.

Sir Francis Hincks.—Then these boundaries on Devine's map are agreed to as representing that proclamation?

Mr. MacMahon.—Yes. I consider there is no point which turns on the proclamation of 1763: we are both agreed as to the correctness of that. We come now to the Quebec Act of 1774, and that is where the first difficulty occurs; but I think I will be able to show to the Commissioners that there is no difficulty in deciding that question. If we look at the circumstances under which the Act was brought in, and take into consideration the statement, as made by the Attorney-General, of what the ob

ject of the Act was and what was originally introduced into the House, and how it was amended, we will easily see that the claim of Ontario in regard to that western boundary cannot be supported at all. My learned friend the Attorney-General laughs.

Hon. O. Mowat.—I thought that those considerations demonstrated our claim: I am amused that I made such a mistake.

Chief-Justice Harrison.—It is not the first time I have heard two counsels relying upon the same facts to support their respective cases.

Mr. MacMahon.—Assuming that the claim made by the Province of Ontario is the correct claim, what territory could they possibly acquire by taking the Red Lake—by running through the Red Lake which is on the boundary there?

Sir Francis Hincks.—I do not think you need trouble yourself about the Red Lake, that is not the point; it is the boundary to the north and east of Hudson Bay, the question of the boundary running to Hudson Bay.

Mr. MacMahon.—I will confine myself to that altogether. If the Commissioners will look at page 77 of Mills' book, they will find the clause of the Act as originally introduced; and I would draw special attention to that, in order to show what was the design of the legislature at that time in settling the western boundary of the Province. It reads in this way: "Be it enacted that all the said territories, and islands, and countries heretofore a part of the territory of Canada in North America, extending southward to the banks of the River Ohio, and westward to the banks of the Mississippi." Well, now, the House of Commons, or the Committee of the House of Commons, at that time understood that if the Act read in that way, when once the River Ohio was reached the use of the word westward would make it on a due west course to the River Mississippi.

Sir Francis Hincks.—I think you do not appreciate our point. You are still at the westerly boundary; it is the northerly boundary we want to get at.

Mr. MacMahon.—You are not troubled about the westerly boundary.

Sir Francis Hincks.—Not so much as the northerly. Whatever the westerly boundary may be, there is no doubt that it runs northerly until it reaches the southerly boundary of the Hudson Bay Company. We want to know what the southerly boundary of the Hudson Bay Company is.

Mr. MacMahon.—In 1703, 1750 and 1857, the Hudson Bay Company were claiming that the height of land was the southern boundary of their territory; they always claimed that.

Sir Francis Hincks.—What you have got to deal with is whether any Acts of Parliament, proclamations, or Commissions to Governors, established other boundaries. You are aware of the points in that branch of the case. Some of the Commissions, for instance, expressly say "to the shore of Hudson Bay."

Mr. MacMahon.—Then, dealing with the question of the Commissions. First we have to look at the constitutional Act of 1791, because it is asserted that the proclamation of 1791 enlarged the boundaries of what was once the Province of Quebec. The Act of 1791 does not itself give boundaries, but the proclamation follows it and gives boundaries. My learned friend says that it does not matter whether the boundaries were extended into the Hudson Bay territory or not, that that is not a question for the consideration of the Arbitrators, but I say that it is. The Hudson Bay Company had a Government of their own under the charter as it existed, and the King could not of his own mere motion take from them the proprietary Government, that which had been granted to them by the charter, unless they had forfeited the charter in some way.

Chief Justice Harrison.—That is assuming that the charter gives them definite boundaries.

Mr. MacMahon.—What took place by the acquisition of Manitoba, by the Manitoba Act, must define the boundaries as far as Great Britain and as far as the Hudson Bay Company are concerned; and when we come to look at what was being stipulated for by the Hudson Bay Company under that Act, and the surrender made in consequence of the Act, we shall find exactly what the British Government were doing and assented to only ten years ago.



Chief Justice Harrison.—What are the boundaries in the proclamation under the Act of 1791?

Mr. MacMahon.—The boundaries under that Act have received judicial interpretation.

Chief Justice Harrison.—We want to give them an interpretation.

Mr. MacMahon.—The proclamation will be found in the Ont. Docts., 27; and I may say here that the whole trouble results from the use of one word, and it is upon that the Province of Ontario are building their right to go to the west and north of what was the Province of Quebec. The last word in the first clause is "Canada," when it should have been "Quebec." It is altogether in relation to that word; and before we know anything about what was comprised in Canada we have to ascertain what was comprised in the limits of Quebec—that is, if the Commissioners think it proper that I should discuss what was proposed in the Act of 1774. That is what I was doing when Sir Francis spoke of the boundaries under the Acts of the Government, as by proclamations, commissions, &c. I considered it necessary to argue that point under the Act of 1774, in order to show that the use of that word in the proclamation of 1791 was a mistake.

Sir Francis Hincks.—Refer to that, please.

Hon. O. Mowat.—It would be rather a bold thing for the Commissioners to say that the use of the word Canada in that Act was a mistake.

Mr. MacMahon.—I say that the Act of 1791, in all its provisions, is merely for the purpose of dividing the Province of Quebec, and that the use of the word Canada was simply a mistake. The Commission to Lord Dorchester is 1791 will be found on page 48, Ont. Docts.; that is the first Commission issued after the Act. It is issued certainly before the proclamation; but the Commission that was issued in 1796 speaks of the Province of Quebec—it does not speak of Canada at all. The third paragraph of Lord Dorchester's Commission is this:—

"And whereas, we have thought fit by Our order made in Our Privy Council on the Nineteenth day of August, one thousand seven hundred and ninety-one, to divide our said Province of Quebec into two separate provinces, to be called the Province of Upper Canada and the Province of Lower Canada, by a line to commence at a stone boundary on the North Bank of the Lake St. Francis, at the Cove west of the Point au Baudet in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of north thirty four degrees west to the westernmost angle of the said Seigneurie of New Longueuil; thence along the north-western boundary of the Seigneurie of Vaudreuil, running north twenty-five degrees east, until it strikes the Ottawas River, to ascend the said river into the Lake Tommiscanning, and from the head of the said lake by a line drawn due north until it strikes the boundary line of Hudson Bay, the Province of Upper Canada, to comprehend all such lands, territories and islands, lying to the westward of the said line of division as were part of our said Province of Quebec; and the Province of Lower Canada to comprehend all such lands, territories and islands lying to the eastward of the said line of division as were part of our said Province of Quebec."

Now, if we are to consider the Quebec Act and the proclamations under it, it is necessary to understand what was comprised in the Province of Quebec under that Act; and it was for that purpose I was referring the Commissioners to what took place on the introduction of the Act in 1774.

Sir Francis Hincks.—That is very important.

Mr. MacMahon.—The Quebec Act, as introduced into the House of Lords, contained these words: "Be it enacted that all the said territories, islands and countries, heretofore a part of the territory of Canada in North America, extending southwards to the banks of the River Ohio, and westwards to the banks of the River Mississippi," etc. I stated that that, as it was, would mean from the point at which the line struck the Ohio, a due west course until it reached the Mississippi. What do we find was done in regard to that? The Legislature felt that that was the interpretation which would be put on these words, and they made an amendment. The amendment

will be found in Cavendish's debates—the Act, as it is, we have. They made this amendment: "Until it strikes the River Ohio, westward to the banks of the Mississippi," but they inserted after the word Ohio, "and along the banks of the said River," showing that they intended that the bank should be followed. And, if the Commissioners read the whole of that Act, they will see that in every instance the phrase "along the bank of the river" is used.

Hon. O. Mowat.—It only professes to describe the south line.

Mr. MacMahon.—But when it comes to the junction of the Mississippi and Ohio it describes it in another way, showing that the eastern bank of the Mississippi was not intended by the Legislature at that time to be the eastern boundary of the Province of Quebec. If they had intended that an amendment would have been made as was made in regard to the Ohio, they would have put "westerly (northerly?) along the bank of the Mississippi," just as they did "westerly along the bank of the Ohio." But when it came to the junction of the Ohio and Mississippi, they said "westward" (northward?), and it is alleged that because they used that word "westward" (northward?) it must mean "westerly" (northerly?) along the banks of the Mississippi River, because a Commission was issued to one of the Governors containing that clause in it. But, when it comes to the Commission of 1796, which describes what was intended to be contained as the territorial jurisdiction of the Governors, that is not to be taken at all. Now, in looking at DeReinhard's case, it will be found that the whole of that was very elaborately argued.

Sir Francis Hincks.—Yes; we understand the whole of that question. You will see that there is a line drawn in this map of Devine's professing to be the boundary according to the Commission of Lord Elgin.

Hon. O. Mowat.—That is the last Commission. The other Commissions were substantially in the same terms. One set of Commissions says "shore," and the other set says "boundary line" of Hudson Bay.

Sir Francis Hincks.—The proclamation of 1791 says, "until it strikes the boundary line of Hudson Bay." Now, what is the boundary line of Hudson Bay?

Chief Justice Harrison.—Can you strike the boundary line of Hudson Bay without going to the shore?

Mr. MacMahon.—It is not the Bay which is meant, it is the territory.

Chief Justice Harrison.—That is the point we want you to address yourself to; it is a very important point.

Mr. MacMahon.—The Commission to Lord Dorchester in 1791 says, "until it strikes the boundary line of Hudson Bay." (Ont. Docts., page 48.)

Sir Edward Thornton.—The proclamation of 1791 follows that very Commission. The wording is the same—"the boundary line of Hudson Bay."

Mr. MacMahon.—The boundary line of Hudson Bay cannot be anything but the boundary line of the territory, because the King had no authority, no right, under a proclamation, to enter upon a territory granted to the Hudson Bay Company for the purpose of governing.

Chief Justice Harrison.—Of course that is all based upon the assumption that it had been granted; but all these proclamations of course throw light upon the question of whether it had been granted or not.

Mr. MacMahon.—They show afterwards how it was dealt with, and I will come to that question now.

Sir Francis Hincks.—They repeat the expression in 1796, five years later—"the boundary line of Hudson Bay."

Chief Justice Harrison.—All the Commissions follow that, along down to 1838.

Mr. Hodgins.—And then, from that down to Lord Elgin's, the language is "strikes the shore."

Mr. MacMahon.—Between those dates they understood that there was a difference between the shore and the boundary line.

Sir Francis Hincks.—You will observe that it still follows the words "due north." In the old Commissions it says "due north to the boundary line of Hudson Bay;" but afterwards they say—"still following the expression "due north"—expressly



"to the shore of Hudson Bay," which rather conveys the idea that they interpreted the boundary line of Hudson Bay and the shore of Hudson Bay to be the same thing.

Sir Edward Thornton.—They improved the English a little in that.

Mr. MacMahon.—The proclamation is void to a certain extent; it has gone too far. I will show the way in which the Government have dealt with the Hudson Bay Company in regard to this very territory. And I say that where there is a proprietary Government such as the Hudson Bay Company was admitted to be—and the British Government have always dealt with them as such, neither the proclamation nor the Act of Parliament could take away the rights of the Hudson Bay Company in any way; the only way to do so, if the Company had forfeited their charter, would be to bring them into court, and that is the course which in 1850 the law officers of the Crown advised should be pursued if the Company had committed any acts by which their charter ought to be forfeited or abridged in any way. In the case of *Campbell vs. Hall*, in 1 Cowper, 204, cited in Forsyth's Constitutional Law, 401, it is laid down by Lord Mansfield that there cannot exist any power in the King exclusive of Parliament.

Chief Justice Harrison.—That depends entirely upon the territory where the power is exercised; if there is no Parliament there is no power to limit the King's authority. There was no Parliament in the Hudson Bay Territory.

Mr. MacMahon.—I cite also the case of *Payne against Lord Baltimore*, 1 Vesey, 444, that and the case of *Campbell and Hall*, together with a case in 12 Peters, the State of Rhode Island against the State of Massachusetts, have decided that where there is a proprietary Government existing there is no authority, unless by proceedings under a *sci. fa.* to take away the territory or to assume any Government over it, so that after the grant was made and confirmed by all these Acts of Parliament, the King had no authority or power to take away the rights of the Hudson Bay Company that existed.

Chief Justice Harrison.—Of course that is assuming one of the things which has been argued before, as to the rights if any of the Hudson Bay Company south of Hudson Bay, and to what extent north. That is one of the points in controversy; all these documents throw light upon it.

Mr. MacMahon.—My learned friends do not claim that they are entitled to any land north of the height of land.

Hon. O. Mowat.—I thought I had occupied a good deal of time in showing that I was claiming that.

Chief Justice Harrison.—I understood the Attorney-General to claim to the Arctic Ocean.

Mr. MacMahon.—I did not know that he meant that.

Sir Francis Hincks.—Do I understand that you have no difficulty about the northern boundary.

Mr. MacMahon.—The northern boundary is of no great consequence; the trouble is with the western boundary. Then came the Act of Union in 1840, and we will see what was the boundary under that. The first Commission, to Lord Sydenham, is dated August 29, 1840. After the line reaches Lake Temiscaming, it is due north from the head of the said lake until it reaches the shore of Hudson Bay, and being bounded on the south, beginning at the said stone boundary between Lancaster and Longueuil, by the Lake Saint Francis, the River St. Lawrence, the Lake of the Thousand Islands, Lake Ontario, the River Niagara, which falls into Lake Erie, and along the middle of that lake; on the west by the Channel of Detroit, Lake Saint Clair, up the River St. Clair, Lake Huron, the west shore of Drummond Island, that of Saint Joseph and Sugar Island; thence into Lake Superior. I think you stop there; it just takes you where the line of 1774 would strike, and shows that Upper Canada is bounded by that northern line running from the junction of the Ohio River to that point in Lake Superior which would be intersected.

Hon. O. Mowat.—It does not say that.

Mr. MacMahon.—No; but that is the whole extent of Canada in 1840, and all that was claimed for it by the British Government.

Chief Justice Harrison.—Yet that same Commission is the one which draws a dividing line between the two parts of Canada, Upper and Lower—a line running due north from Lake Temiscaming to the shores of Hudson Bay.

Mr. MacMahon.—Yes, that is included in that Commission; that wrong reading appears to have got into it in some way or other; but no matter what the Commission was, the King had no right to draw that line as against the Hudson Bay Co., if we satisfy you that the Hudson Bay Company's territory extended south of the Hudson Bay to the height of land. Then the Commission that was issued to Lord Elgin in 1846 is somewhat similar:—"Thence into Lake Superior." Lord Elgin left in 1852 or 1853; showing that up to that time the jurisdiction of the Governors General of Canada ended on the shores of Lake Superior, and must have ended just about at the point where that northerly line strikes; because the Province of Canada afterwards bought from the Indians the territory between the height of land. I have argued that question about as fully as I can, in regard to the Commissions and in regard to the extent of territory under the jurisdiction of the Governors in 1846, and down to the last Commission issued to Lord Elgin in that year, and up to the time he left in 1852 or 1853. Now, the British Government must have been aware at that time where a line drawn from the junction of the Ohio and Mississippi Rivers would strike in Lake Superior, and no doubt they intended Upper Canada to be included in that.

We come now to Confederation. The 146th section of the British North America Act is as follows:—

"It shall be lawful for the Queen, by and with the advice of Her Majesty's Most Honorable Privy Council, on Addresses from the Houses of Parliament of Canada and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island and British Columbia, to admit those Colonies or Provinces, or any of them, into the Union, and on Address from the Houses of the Parliament of Canada, to admit Rupert's Land and the North-Western Territory, or either of them, into the Union on such terms and conditions, in each case, as are in the Addresses expressed, and as the Queen thinks fit to approve, subject to the provisions of this Act; and the provisions of any Order in Council in that behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland." (Ont. Docts., p. 464).

Well, after or about that time, the Agents of the Government of Canada went to England, and made representations in regard to the expenditure of some \$20,000 which the Government of Canada thought proper to expend on roads in the vicinity of Hudson Bay. In the letter that was addressed to the British Government—by Sir Stafford Northcote, I think, who was then the Governor of the Company—he complained, on behalf of the Company, of trespasses having been committed by the Canadian authorities; and although the Canadian authorities denied that they were committing any trespass whatever in going to the Red River country, still they stated that the people there were in a starving condition, and that as an act of humanity alone the Government was prompted to make this expenditure, so as to give the people employment. That correspondence shows conclusively what was being asserted on the one hand by the Canadian authorities, and being denied by the Hudson Bay Company on the other hand—denied with all the force which could be given to a denial. The result was that the British Government, through whom this charter to the Hudson Bay Company was granted, or at least confirmed—because they did confirm it in effect if not in express words, by stating in the numerous Acts of Parliament from 6th Anne to 43rd George the Third, that all the rights and privileges of the Hudson Bay Company should be respected—the result was that the British Government took legislative action. What do we find them doing? We find that an Act known as the Rupert's Land Act was passed in 1868, after the presentation of an Address from the Senate and House of Commons of Canada on December 17th, 1866. (Ont. Docts., 404 to 407). What was the agreement between the parties to this transaction? It is necessary to understand what was being surrendered, because the fact of the surrender, and the acceptance of that surrender by Her



Majesty, was a confirmation of everything that the Hudson Bay Company had been claiming under their charter; and that is a point which I am sure the Arbitrators will not lose sight of in dealing with this question. The surrender itself, the Act of Parliament itself, the agreement which was come to, not only between the British Government and the Hudson Bay Company, but between the Canadian authorities; these all prove the same thing. Under paragraph No. 5 of the Hudson Bay Company's deed of surrender, "the Company may within 50 years after the surrender, claim in any township or district within the fertile belt in which land is set out for settlement, grants of land not exceeding one-twentieth part of the land so set out." 6. "For the purpose of the present agreement the fertile belt is to be bounded as follows: On the south by the United States boundary; on the west by the Rocky Mountains; on the north by the northern branch of the Saskatchewan; on the east by Lake Winnipeg, the Lake of the Woods, and the waters connecting them." Now here are the boundaries of the fertile belt, and there can be no mistaking them. Under the second section of the Rupert's Land Act, it is declared that the term "Rupert's Land" should include the whole of the lands and territories held, or claimed to be held, by the said Governor and Company; so that all that land, which in 1719 and 1850 the Company were claiming, the British Government admitted they had a right to; and the Dominion accepted the surrender of all that, and permitted them under the agreement.—

Chief Justice Harrison.—Of course the British Government, when accepting the surrender were willing to accept a surrender not only of all that the Company had, but of all that they claimed to have had.

Mr. MacMahon.—They claimed the fertile belt, and were allowed to participate afterwards in its lands as their own; they were allowed to hold lands there.

Mr. Hodgins.—The same as squatters on Crown Lands?

Mr. MacMahon.—They claimed it as lords of the soil, and entitled to the domain. The Commissioners will see from this map of 1850 what they were claiming. They were claiming down to the 49th parallel, and when they came to the height of land again they went north, showing that they were claiming all that extent of territory to the height of land at the very last moment. Ontario, as a part of the Dominion, knew of all that was going on; knew that the Dominion was entering into these negotiations; but she sat by and never said a word—never said, "No matter what you do, we are going to claim this land." They said nothing, but agreed that all this should be surrendered. It was surrendered, and paid for by a million and a-half of the Dominion's money, and the surrender was accepted by the Dominion and British authorities as being a part of what was granted to the Hudson Bay Company. It does not matter whether the Company had a right to it or not, they were claiming it, and claiming to be paid for it. And there is where I say that the Province of Ontario can have no right now to claim any portion of that land that was surrendered, to claim it as being part of the Province. If she had a right to claim it, then was the time to intervene, and say, "this is part of our Province, and if you accept the title to that land you do so at your peril." I need not quote the numerous authorities in support of the proposition as to the Province now being excluded.

Hon. O. Mowat.—I would like very much to see them, if there are any.

Mr. MacMahon.—I cite Sturey's equity, sec. 546.

Chief Justice Harrison.—That is quite clear as between individuals; can you show us that that is part of the law of nations?

Mr. MacMahon.—I do not think that the Province can possibly stand in a better position than an individual.

Chief Justice Harrison.—One nation is not bound by what two other nations do, unless the third nation is a party to what is going on.

Mr. MacMahon.—Ontario is a part of the Dominion.

Chief Justice Harrison.—It was no party to these negotiations.

Mr. MacMahon.—No.

Chief Justice Harrison.—Then the arrangement was something that took place between other parties that were strangers to the Province.

Mr. MacMahon.—The Province is part of the Dominion; and, knowing that the Dominion was acquiring rights from the Hudson Bay Co., if the Province had any claim to that territory they should have made the claim then, when the matter was about being settled. The instructions given to the Commissioners on behalf of the Dominion, when it was proposed that this claim should be settled, will be found on page 20 of the Dominion case, from which I will read an extract:—

1. The boundary in question is clearly identical with the limits of the Province of Quebec, according to the 14th Geo. III., c. 83, known as the "Quebec Act." and is described in the said Act as follows, that is to say: Having set forth the westerly position of the southern boundary of the Province as extending along the River Ohio "westward to the banks of the Mississippi" the description continues from thence (*i. e.*, the junction of the two rivers) "and northward to the southern boundary of the territory granted to the Merchant Adventurers of England trading to the Hudson Bay." Now, what the territory of the Merchant Adventurers of England, trading to the Hudson Bay was has been fully set forth by them, and, although on the side of the Province of Quebec, the line of the Province of Quebec may have struck the shore of Hudson Bay, still that has nothing to do with this western limit. It can have nothing to do with that, because on the western limit there is no line at all. We are bound by that in no way, and they may get as much from the Province of Quebec as they can; the Province of Quebec will be glad to dispose of it.

My learned friend, Mr. Monk, will follow me, and if there is anything that strikes me after my learned friend, the Attorney-General, has replied, perhaps the Arbitrators will allow me a few words.

E. Monk, Esq.—I have great difficulty in adding anything to the able and exhaustive argument of my friend and colleague, Mr. MacMahon. I shall limit myself as briefly as possible to a reference to some of the portions of my learned adversary's case upon certain points which, to say the least, are well open to controversy. I find on the third page of his case—and I know that he laid great stress upon it in addressing the Commissioners—a letter written by Sir George E. Cartier and Mr. MacDougall to Sir F. Rogers. I find on the fifth page the following in reference to this letter:—"Ontario claims that the official views of the Government of the Dominion, as thus expressed, should *prima facie* be carried out as between the Dominion and the Province, unless the Dominion proves that the assertions so made by its Ministers were false or mistaken, and that the claim to which they led was unfounded." The second assertion in this letter is that the charter of the Hudson Bay Company expressly excluded all lands, etc., then possessed by the subjects of any other Christian Prince or State;" and the next paragraph states that "by the Treaty of St. Germain-en-Laye (1632) the King of England resigned to the King of France the sovereignty of Acadia, New France and Canada generally, and without limits." That, I submit, is unfounded. The Treaty of Ryswick is quite different in its terms. The word "resigned" or "give up" is not a correct translation for the French version of it as I find it in the Treaty of St. Germain, at page eleven of the Ont. Docs. The French words inserted between brackets there are "rendre" and "restituer"—to give back or restore—implying unquestionably a previous possession on the part of France of these territories. New France, Acadia and Canada could not have included Hudson Bay. The Hudson Bay territories were never in the possession of France at that time, and, as Mr. MacMahon has established, were not even known or discovered in 1632 by the French. The Attorney-General also laid particular stress on this memoir of M. de Callières, and I may therefore be allowed to refer the Commissioners to a few notes that I have made on the subject. The first French voyage alluded to by Mr. Mills is that of Attorney-General Bourdon, and Mr. Mills makes the statement upon the authority of a memoir from Sieur de Callières to the Marquis de Seignelay and another memoir from the Marquis de Denonville. Much astonishment was expressed at the assertions in these memoirs, and a doubt thrown upon their correctness by the learned counsel for the Province. This memoir says that in 1656 Jean Bourdon, the Attorney-General of Quebec, explored the entire Coast of Labrador and entered Hudson Bay; and this, M. de Callières says, is proved by an extract from



the ancient registry of the Council of New France of 1656. Jean Bourdon was a man thoroughly well known in the Province—better known, no doubt, in that part of the country than would be Attorney-General of the Province to-day, and was a man with whom the Jesuits were on intimate terms, and who is mentioned on almost every page of their Relations, written at that time. Yet notwithstanding these facts, no mention whatever is made in the “Relations des Jesuites”—and I have read them over with care—no mention whatever is made of Jean Bourdon’s voyage to Hudson Bay. At page 9 of the “Relations” for 1658 mention is made of an attempted journey which Bourdon made with the intention of reaching Hudson Bay. Under date 11th August, we find an entry in which the Father Jesuit who is reported as keeping the journal at that time says that the barque of M. Bourdon returned. We have in the “Relations” no particular date of Bourdon’s starting on this voyage; but in the “Journal des Jesuites,” pages 209, 218, the Commissioners will find that he left in the middle of May in the same year; he returned on 11th August; and, as is not controverted, it would have been perfectly impossible for him to have made the voyage to Hudson Bay in so short a time; but the learned counsel stated that there was no reason why this particular voyage should have been the one mentioned by de Callières. This voyage to which I refer was made in 1657. The extract from the register to which de Callières refers is dated 1656; clearly indicating that what de Callières took as evidence of a voyage having been made was simply an order, an instruction, given by the council to Sieur Bourdon to attempt this voyage. There can be no doubt whatever that the “Relations des Jesuites,” whatever may have been said of them since, were the only correct record which was kept of the early doings of the colony; and there can be no doubt whatever that had Sieur Bourdon in 1656, as is claimed, made a voyage of this kind, a record of it would have been kept, as I propose to show in a moment. The next voyage to which M. de Callières refers in his memoir is that of Father Dablon, a Jesuit, who in 1661, as Mills states in his report, was ordered by Sieur d’Argenson, Governor of Canada, to proceed to the country about Hudson Bay. It is stated that Dablon went there with Sieur de Vallière, and that the Indians who came back with them to Quebec, declared that they had never seen any Europeans there before. Mr. Mills in a note on the next page, 127, explains the Relations of the Jesuits not mentioning Bourdon’s voyage by the assertion that they were naturally anxious that members of their own society should be the pioneers in discovery, and that, therefore, many important discoveries were never brought to light in their “Relations” because they were not made by Jesuits. Of course an argument of this kind cannot apply to the voyage of Dablon, as he was a Jesuit, a man in whom the interests of the society were centred; and if a voyage had been made by him, no doubt a great deal of prominence would have been given to it. On the contrary, in the third volume of the Jesuit Relations, 1662, we find this Jesuit Father Dablon describing an unsuccessful voyage that he made. There can be no doubt that he attempted a voyage. A portion of this relation is written by himself, and he calls it, “Journal du premier voyage fait vers la mer du nord.” This first portion of it is most important and conclusive, as showing that de Callières in his memoir to M. de Seignelay, twenty-one years afterwards, must have been speaking from hearsay and without any authentic documents on which to base his assertions. Dablon says that the highest point which he did reach was Nekauba, a hundred leagues from Tadousac, and that subsequently he returned; and this is from a report of this journey written by himself. I noticed that the Attorney-General attempted to raise a doubt as to the identity of the Dablon in de Callières’ memoir with the Dablon of the “Relations des Jesuites.” I have examined with care, and I find at the end of one of the volumes a complete list of all the Jesuits, pioneers both of the faith and in the way of discovery, and I find that there is only one Dablon mentioned. Another inaccuracy of this memoir is as to the trip of Duquet, under an order said to have been given by Sieur d’Argenson. There can be no doubt that at the time this pretended order was given d’Argenson had left Canada. The Attorney-General must admit now, although he attaches so much importance to this memoir, that it is inaccurate in most im-

portant particulars; first as to the voyage of Bourdon, which is shown never to have taken place at all; next as to the voyage of Dablon, which is shown also not to have taken place; then as to the trip of Duquet, under the special instructions of a superior who had left the country two years before. My learned friend has attached a great deal of importance, apparently, to the fact that in 1627 a charter had been granted by Louis XIII., to a number of adventurers sent to discover new lands to the north of the River St. Lawrence. But my learned friends have omitted to verify the fact that in this charter to the French Company, which the Commissioners will find in the first volume of at page 6, the only portions of land granted to the French Company are the lands or portions of lands which had already been occupied by the Kings of France, and the object of the charter was simply to give them an exclusive right of trade therein. The charter reads as follows. (Reads an extract in the French language). Thereby clearly indicating that the charter did not go further than the land occupied by the predecessors of Louis XIV. In the case for the Province it is stated at page 3, "La Nouvelle France was then understood to include the whole region of Hudson Bay, as the maps and histories of the time, English and French, abundantly prove." This is a broad assertion, which is not supported by the early discoverers nor by the historians of that time. Charlevoix described New France as being an exceedingly limited territory. (Reads extract from Charlevoix in French.) I find, also, in L'Escarbot, a description which shows that at that time the whole territory known as New France extended but a few miles on each side of the St. Lawrence; and Charlevoix regrets it, and says that at this time the giving up of this territory did not amount to much, as New France was circumscribed by very narrow limits on either side of the St. Lawrence. My learned friends say that the right of the French to places in Hudson Bay was acknowledged by the Treaty of Ryswick. The Commissioners will see, on reference to this Treaty of Ryswick, that a special provision was made, quite distinct from the provision in the seventh Article of the Treaty. By Article VIII it was specially provided that Commissioners should be appointed with full powers to settle the limits of the territories of the conflicting nations around Hudson Bay. The fact of these Commissaries never having met to settle the limits renders, I respectfully submit, the provisions of the treaty, so far as the territories around Hudson Bay are concerned, a dead letter. Having shown that Sir George E. Cartier and Mr. Macdougall were mistaken in most important points, I think that the pretension of my learned friends that the Dominion should be bound by this letter of its Ministers is unfounded. On referring to a map attached to a report made by Mr. Ramsay to the Dominion of Canada some time ago, I find a line which corresponds with the one the Chief Justice referred to at the time, where the Red Lake is shown immediately to the north-west of Lake Superior, at the height of land. I understand that the Commissioners have much less difficulty about the western boundary than the other? Chief Justice Harrison.—It is the northern boundary that we want.

My learned friend seemed to lay considerable stress on the Constitutional Act of 1791. The Commissioners were alluding a few minutes ago to the fact that in the proclamation which followed the Constitutional Act (Ontario Documents, page 27) the words "until it strikes the boundary line of Hudson Bay" are to be found. Now, this proclamation was simply declaring when the Constitutional Act would come in force, so that if the Commissioners would take communication of the Constitutional Act itself, which is in Ontario Documents, page 4, they will perceive a frequent recurrence of the words "Government of the Province of Quebec." It is to be found in the second line of the second paragraph, and is continually mentioned, thereby indicating that by that Constitutional Act there was no intention whatever to enlarge or vary in any manner the old limits of the Province of Quebec, as stated in the Quebec Act of 1774. I may be allowed to refer to the remarks of Chief Justice Sewell in the De Reinhard case, which do not apply to the western boundary, but show that no increase of the limits of the Province of Quebec could have taken place. I am citing from the minutes taken in shorthand under the sanction of the court, printed in a



book which I got from the Parliamentary Library, in which the point specially set forth by Mr. Stuart, then representing the prisoner, is fully reported.

Hon. O. Mowat.—I think the case is wrong on that point; I think they did decide it as far as they could.

Mr. Monk.—The case came up specially on two or three occasions. It came up on a motion for arrest of judgment after the verdict had been rendered. On this question as to whether the Constitutional Act of 1791, owing to the use of this word "Canada," might directly or indirectly be accepted as showing what was the Province of Quebec, Chief Justice Sewell was concurred with by Mr. Justice Bowen and Mr. Justice Perault. I will read from his decision:—

Chief Justice Sewell.—The Court are most distinctly of opinion, on referring both to the Act of 1791 and that of 1774, that the argument on the defence must fail. What was the object of each Act? Amongst others, that of 1774 was to enlarge the Province of Quebec, which had been created in 1763. That of 1791 was to separate or divide the Province of Québec into two Provinces, to be denominated Upper and Lower Canada, and make each respectively independent of the other, by giving a Legislature to each respectively, but still retaining between or within the two Provinces, the same extent of country, the same space as the one Province contained. What is the Act? What is its object, its avowed object? To repeal certain parts of the Act of 1774; and what is the part repealed? It is that part of it which gives authority to the Council of the Province of Quebec; and what is the reason assigned for so doing? Why, that His Majesty had signified it to be his royal will and pleasure to divide his Province of Quebec. To assert that he intended by this that the limits of the Province should be extended by the separation, appears to be repugnant to the plainest principles of common sense, and therefore I cannot assent to it. The short history of the Act of 1791 is briefly this: The King signifies to Parliament his royal intention of dividing the Province of Quebec, and he calls on the Legislature to provide for this alteration by granting an Act adapted to the change. The Legislature pass an Act providing for the due government of the two Provinces, and under the authority of this Act, and the Royal Proclamation, the Province of Quebec was accordingly divided, the Royal Proclamation being an exercise of sovereign authority. His Majesty in that Act, by and with the consent of his Privy Council, declared what shall be the line of separation between Upper and Lower Canada, and how much of the former Province of Quebec shall belong to the one, and how much to the other. The object of the Act and the object of the Royal Proclamation are so clearly expressed that we cannot for a moment doubt upon the subject. What says the Act? "His Majesty having being pleased to signify his royal will and pleasure to separate and divide the Province of Quebec." What says the Proclamation? Why, the very same words. To divide the Province of Quebec, not to add to it, any more than to take away from it. Therefore Upper Canada, in the purview, could include only that part of the Province so divided as was not contained in Lower Canada; but it could not extend beyond those limits which constitute the Province of Quebec; otherwise it would certainly have been an Act to enlarge, rather than an Act to divide.

Sir Francis Hincks.—Unfortunately it does not help us one bit, because of the indefinite character of the boundary of Hudson Bay. We want to know the southern boundary of Hudson Bay. The Act of 1791 does define it to a certain extent, because it refers to a line drawn due north to a certain point, to the boundary of Hudson Bay and then afterwards the commissions come to assist us, and they say distinctly "to the shore of Hudson Bay." If the Act had said "the boundary line of the territory of Hudson Bay," it would have been clear; but it says, "the boundary of Hudson Bay." That is the difficulty with which we have to deal.

Chief Justice Harrison.—From that it may be very fairly argued that it was understood at that time that the south shore of Hudson Bay was the southern limit of the Hudson Bay Company.

Sir Francis Hincks.—The Attorney-General has brought forward his argument very strongly on that point, and I do not think you have answered him by the Act of 1774, because that simply gives an indefinite boundary.

Mr. Monk.—If our contention be correct that it was not intended by the Constitutional Act to extend in any manner the limits of the Province of Quebec, we have to examine the Quebec Act of 1774, however indefinite it may be, to see what were considered the southern boundaries of Hudson Bay at that time. The Quebec Act of 1774, in defining the northern boundary of the extended Provinces of Ontario and Quebec, says, "northward"—not to Hudson Bay, as the proclamation does, but—"to the southern boundary of the territory granted to the Merchants Adventurers of England trading into Hudson Bay."

Chief Justice Harrison.—That, of course, was uncertain at that time. There was no natural boundary there. That has been the dispute all along, and it continued shifting from time to time.

Mr. MacMahon.—And that is what is to be decided by the Commissioners now, incidentally. The Act and the proclamation, I suppose, we will be justified in taking together.

Mr. Monk.—This would bring us back to the proclamation of 1763, constituting the four Provinces in the British Dominions, and specifying thus: "and we do further declare it to be our royal will and pleasure for the present, as aforesaid, to receive under our sovereignty, dominion and protection, for the use of the said Indians, all the lands and territories not included within the limits of our said three new Governments, or within the limits of the territory granted to the Hudson Bay Company"—not specifying them again, but clearly indicating by inference that the territory to the north of the old Province of Quebec up to the limit, to that northern boundary, had been granted to the Hudson Bay Company, as it was occupied or supposed to be occupied by them. I would refer the Commissioners to the 10th Article of the Treaty of Utrecht (page 16, Ont. Docs.), as follows:—"The said most Christian King shall restore to the Kingdom and Queen of Great Britain, to be possessed in full right forever, the Bay and Straits of Hudson, together with all lands, seas, sea-coasts, rivers and places situate in the said Bay and Straits, and which belong thereto, no tracts of land or of sea being excepted, which are at present possessed by the subjects of France." At that time there were some forts occupied by the French just at the other side of the northern boundary, the height of land. The 11th Article of the Treaty provides that "the most Christian King shall take care that satisfaction be given, according to the rule of justice and equity, to the English Company trading to the Bay of Hudson, for all damages and spoil done to their colonies, ships, persons and goods, by the hostile incursions and depredations of the French." On reference to this map of Devine's the Commissioners will see that at that time there were French posts just at the other side of the height of land. For instance, there was one on the south-west corner of Lake Mistassiniac; another just at the other side of the height of land, just above Lake Temiscaming; another at the source of Moose River; and another south-east of Lake Joseph, a little above Lake Superior. The stipulation regarding the damages which were to be paid to the Hudson Bay Company, and the restitution of the forts, constitute, as far as we can judge, an acknowledgment of their rights to that portion of the country. The real question, as I understand it, is to ascertain what was understood by the Hudson Bay Company as their southern boundary by the authority that fixed that of Upper Canada. Subsequent to this Treaty of Utrecht, in 1711, Commissioners were appointed; and although the first Commissioners appointed did not come to any conclusion, owing to the fact of their powers, it would seem, not being sufficiently extensive, the Commissioners were appointed, and the Hudson Bay Company were ordered by the Lords Commissioners of Trade and Plantations to send in their claim as they understood it. The Hudson Bay Company did send in their claim, and in 1719 instructions were given to Commissioner Bladen regarding the limits of the territory in question, based on the claim of the Hudson Bay Company; and Commissioner Bladen received certain instructions as to the limits which he was to insist upon. These instructions are at page 362, Ontario Documents. This is important as being a recognition on the part of England of the claim of the Hudson Bay Company, such as had been sent in at the time, since they insist upon Commissioner Bladen maintain-



ing his position as far as these limits are concerned. The limits as contained in these instructions are a line "drawn from the south-western point of the island of Grimington or Cape Perdrix (so as to include the same within the limits of the Bay) to the great Lake Miscosinke, alias Mistoveny, dividing the said lake into parts (as in the map to be delivered to you). And that where the said line shall cut the 49th degree of northern latitude another line shall begin and be extended westward from the said lake, upon the 49th degree of northern latitude, over which said line, so to be described as above mentioned, the French and all persons by them employed shall be prohibited to pass to the northward of the said 49th degree of latitude." There can be no doubt whatever that at that time the 49th parallel seemed settled upon as corresponding about with the height of land. Further on in the instructions to the Commissary are these words: "but you are to take especial care in wording such articles as shall be agreed on with the Commissary of his most Christian Majesty upon this head, that the said boundaries be understood to regard the trade of the Hudson Bay Company only," clearly recognizing in these instructions to their Commissary that the charter of the Hudson Bay Company, such as it had been granted to them, according to their interpretation and recognition of the charter, extended down to the 49th degree of latitude.

Chief Justice Harrison.—For the purposes of trade only.

Mr. Monk.—I would respectfully submit that their charter for the purposes of trade did not extend further than their territorial right went. In 1719 a memoir on the subjects of the limits of the Hudson Bay was sent to the English Commissioners through Lord Stairs to the Marquis d'Etrees, one of the French Commissaires. It states:—"The Commissaires named by His Britannic Majesty demand that the said limits may be defined in the following manner, viz.: that the limits shall commence "from the North Cape, in Davis' Bay, in latitude 56 degrees 30 minutes, which shall "serve as limits between the English and the French on the Coast of Labradore." It then describes the Coast of Labrador and the 49th parallel as being the limits on which the English Commissaries would insist; and proceeds to state that these limits were to be insisted on solely as regards trade only, and that His Britannic Majesty did not thereby accede to the right of the French to any lands in America in the said boundaries. I submit that this was an act on the part of His Majesty's Government clearly showing that in 1719 the interpretation of the Hudson Bay charter and the limits, as understood then, were the 49th parallel, or what was corresponding to it, the height of land, as understood at that time. I will not detain the Commissioners any longer on this portion of the case. If there is any difficulty as to whether this northward line should be drawn due north from the confluence of the Ohio and the Mississippi, or should follow the course of the Mississippi, I would refer the Commissioners most particularly to the judgment, a very exhaustive one, which was rendered by Chief Justice Sewell and his colleagues upon the motion on arrest of judgment. It is not reported in full in the Ontario Documents, and is very imperfect as an extract. The point was a most important one; the life of a fellow-being depended on it; and the gentlemen on the Bench to whom were entrusted the decision were men of the highest reputation and standing in the legal world.

Chief Justice Harrison.—Notwithstanding the adjudication, the point supposed to be adjudicated upon was considered so doubtful that the sentence was never acted upon.

Mr. Monk.—But the reason I lay some stress upon this is that my learned friend seemed to think that this question at the trial had simply come up incidentally. The fact is that it was argued at great length on the motion for arrest of judgment, and decision came to after mature consideration of all the documents and treaties, and after as much historical research as was possible. Chief Justice Sewell says:—"We have been compelled to give a decision upon the question, not from any wish on our part, but because it has been brought before us and we had no way of evading it." "It is impossible for us to do otherwise; it is a fixed and certain boundary (speaking of the due north line from the confluence of the Ohio and Mississippi), and according to the statute we have, to the best of our knowledge, decided it. In this decision we have made we are supported by the authority of Lord Hardwicke's

"the disputes between Penn and Baltimore"—where a similar difficulty arose. I have the case at length, but there is no use in detaining the Commissioners any longer upon it, if I may be allowed to leave this book with them. The discussion about this northward line is very amply shown in these notes which I have, much more so than in the Ont. Docts. I do not know from what report that extract was taken. The book I have contains every point brought up and adjudicated upon, and every argument used in favor of the pretension which my friends are urging, that the Mississippi should be the boundary line.

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## A STATEMENT OF THE CASE OF THE PROVINCE OF ONTARIO RESPECTING THE WESTERLY AND NORTHERLY BOUNDARIES OF THE PROVINCE.

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PREPARED FOR THE ARBITRATION BETWEEN THE DOMINION AND THE PROVINCE.

Ontario has the same limits as Upper Canada had; and the same limits as, west of the division line between Upper and Lower Canada, the Province of Canada had, and the Dominion of Canada had before its purchase of the rights of the Hudson Bay Company.

In the present dispute the claim of Ontario is to the boundaries which were officially insisted upon by the Province of Canada before Confederation, and by the Dominion afterwards. It is submitted that the demand so made was just and well founded.

Thus the Hon. Mr. Cauchon, Commissioner of Crown Lands, in an official paper in the year 1857, claimed that the westerly boundary of the Province extended "as far as British territory, not otherwise organized, would carry it, which would be the Pacific; or, if limited at all, it would be by the first waters of the Mississippi, which (the due west line from the Lake of the Woods) intersected, which would be the White Earth River; and this (he showed) would, in fact, correspond with the extent of Canada previously known to the French. \* \* \* \* The southerly boundary of the British dominions, west of Lake Superior, being, therefore, demonstrated identical with the southerly boundry of Canada to *some point due west of the Lake of the Woods*, the only question is as to where that point is to be found. Is it the White Earth River, the first waters of the Mississippi which the due west line intersects; or is it the summit of the Rocky Mountains, on the same principal that the *co-terminous* boundary of Louisiana was ultimately so construed?"

With respect to the northerly boundary, the Commissioner pointed out that the only possible conclusion is that Canada is either bounded in that direction by a few isolated posts on the shore of Hudson Bay, or else that the Company's territory is \* \* \* a myth, and consequently, that Canada has no particular limit in that direction."

So, also, after Confederation, in an official letter of the Canadian Ministers, Sir George E. Cartier and the Honorable William McDougall, to Sir Frederick Rogers, Secretary of State for the Colonies, dated 16th January, 1869; they pointed out that "the boundaries of Canada on the north and west were declared, under the authority of the Constitutional Act of 1791, to include 'all the territory to the westward and southward' of the 'boundary line of Hudson Bay \* \* \* \* the utmost extent of the country commonly called or known by the name of Canada.' Whatever doubt may exist as to the 'utmost extent' of Old or French Canada, no impartial investigator of the evidence in the case can doubt that it extended to, and included, the country between the Lake of the Woods and Red River. The Government of Canada, therefore, does not admit, but on the contrary denies, and has always denied, the pretensions of the Hudson Bay Company to any bit of soil beyond that of squatters in the territory" between the Lake of the



Woods and Red River (that being the territory to which the matter which called forth the letter referred.)

In another letter, dated 8th February, 1869, also addressed to Sir Frederick Rogers, the same Ministers mentioned, among other facts and inferences "which cannot (they believe) be disputed," the following:—

"1. The charter of Charles II. (and for the present we raise no question as to its validity) could not, and did not, grant to the Hudson Bay Company any territory in America which was not then (1670) subject to the Crown of England.

"2. The charter expressly excluded all lands, &c., then possessed by the subjects of any other Christian Prince or State.

"3. By the Treaty of St. Germain-en-Laye (1632), the King of England resigned to the King of France the sovereignty of Acadia, New France, and Canada generally, and without limits.

"4. 'La Nouvelle France,' was then understood to include the whole region of Hudson Bay, as the map and histories of the time, English and French, abundantly prove.

"5. At the Treaty of Ryswick (1697), twenty-seven years after the date of the charter, the right of the French to 'places situated in the Hudson Bay,' was distinctly admitted; and altho' Commissioners were appointed (but never came to an agreement) to 'examine and determine the pretensions which either of the said Kings hath to the places situate in the Hudson Bay,' and with 'authority for settling the limits and confines of the lands to be restored on either side,' the places taken from the English (i.e., from the Hudson Bay Company) by the French previous to the war, and re-taken by the English during this war, shall be left to the French by virtue of the foregoing (the 7th) article.' In other words, the forts and factories of the Hudson Bay Company, established in Hudson Bay under pretence of their charter and taken possession of by the French in time of peace, on the ground that they were an invasion of French territory, were restored by the Treaty of Ryswick, to the French, and not to the Company.

"6. By the Treaty of Utrecht, 1713, 'the Bay and Strait of Hudson, together with all lands, seas, sea-coasts, rivers and places situate in the Bay and Straits, and which belong thereto,' were finally ceded to Great Britain.

"7. As no definite boundary was ever established between the possessions of the French in the interior and the English at Hudson Bay, down to the Treaty of Paris, 1763, when the whole of Canada was ceded to Great Britain, the extent of the actual possession by the two nations for some period, say from the Treaty of Utrecht to the Treaty of Paris, affords the only rational and true basis for ascertaining that boundary.

"8. The evidence is abundant and conclusive to prove that the French traded over and possessed the whole of the country known as the Winnipeg Basin and Fertile Belt from its discovery by Europeans down to the Treaty of Paris, and that the Hudson Bay Company neither traded nor established posts to the south or west of Lake Winnipeg, until many years after the cession of Canada to England.

"9. No other or subsequent grant to the Company was ever made which could possibly extend their territorial rights under their charter. The license to trade in the Indian Territories, which they obtained in 1821, was revoked in 1858, and has not been renewed.

"The country which, in view of these facts, must be excluded from the operation of the charter, includes all the lands fit for cultivation and settlement in that part of British America."

Ontario claims that the official views of the Government of the Dominion thus expressed, should *prima facie* be carried out as between the Dominion and the Province, unless the Dominion proves that the assertions so made by its Ministers were false or mistaken, and that the claim to which they led was unfounded. The onus of proof is on the Dominion.

The opinion of Chief Justice Draper, as communicated to the Government of the Province of Canada, 12th June, 1857, was that the decision of the Privy Council would give "to Canada a clear right west to the line of the Mississippi and south

considerable distance north of what the Hudson Bay Company claim;" though not any territory "west of the westernmost head of the Mississippi River."

But the claim of the Dominion as made in 1872, after having acquired the Company's right, and as made now, proposes to limit the Province on the west to the meridian of the confluence of the Ohio and Mississippi, variously stated as  $88^{\circ} 50'$ ,  $88^{\circ} 55'$ , and  $89^{\circ} 9' 27''$ ; and to limit the Province on the north (as the Company claimed in 1857) by the height of land which divides the waters that fall into the Hudson Bay from those that fall into the St. Lawrence and its lakes.

In support of the claim which Ontario represents, the Province relies on the arguments of the Ministers of the Province of Canada before Confederation, the arguments of the Ministers of the Dominion, the legal opinion of the learned Chief Justice, and the arguments set forth in Mr. Mill's report, and in the other papers, on the same side, which have been collected and printed for the purpose of the present Arbitration. The evidence, obtained during the present year, affords some fresh arguments in favor of the same views.

The present statement is a summary of some only of the facts and reasons which support Ontario's claim.

In 1763 France ceded to England Canada with "all its dependencies," reserving so much of what had theretofore been known as Canada as lay west of the Mississippi River; and the treaty provided that the confines between "France and England in that part of the world shall be fixed irrevocably by a line drawn along the middle of the River Mississippi from its source.....to the sea."

Shortly after the treaty, His Majesty, by Royal Proclamation, dated the 7th October, 1763, erected the Province of Quebec, with certain boundaries therein set forth. Afterwards, in 1774, the Quebec Act was passed; which recited that "by the arrangements made by the said Royal Proclamation, a very large extent of territory, within which were several colonies and settlements of the subjects of France, who claimed to remain therein under the faith of the said Treaty, was left without any provision being made for the administration of civil government therein." The Act therefore provided, "that all the territories, islands, and countries in North America, belonging to the Crown of Great Britain, bounded on the south by "a line therein described, from the Bay of Chaleurs to" the River Ohio, and along the bank of the said river westward to the banks of the Mississippi, and northward to the southern boundry of the territory granted to the Merchants Adventurers of England trading into Hudson's Bay,.....be and they are hereby, during His Majesty's pleasure, annexed to and made part and parcel of the Province of Quebec, as created and established by the said Royal Proclamation of the 7th October, 1763."

Ontario contends that a true construction of this language requires that the line northerly from the confluence of the Ohio and Mississippi should follow the Mississippi River to its source.

That this is not only the just construction of the language employed, but was so the real intention of Parliament, is shown further by the history and the known objects of the Bill, by the proceedings thereon in the House of Commons, and by the letter of the Right Honorable Edmund Burke, dated 2nd August, 1774, to his constituents of the Province of New York, whose agent he was at the time.

So, the Royal Commission which was issued immediately afterwards (viz: 27th December, 1774), to Sir Guy Carleton, as Captain General and Governor-in-Chief of the Province, expressly describes the line from the confluence of the Ohio and Mississippi as "northward along the eastern bank of the said river [Mississippi] to the northern boundary of the territory granted to the" Hudson Bay Company.

Sir Frederick Haldimand succeeded Sir Guy Carleton. His Commission is dated 14th September, 1777, and assigned to the Province the same boundary lines as the previous Commission had done.

These two Commissions remove all reasonable doubt as to the line northward along the banks of the Mississippi to its source on two grounds:—

(1.) On the ground that these Commissions show the contemporaneous exposition of the intention of the Act by the Ministers of the day and by their disting-



ished law advisers. Lord Camden was Lord Chancellor, Mr. Thurlow was Attorney-General, and Mr. Wedderburn was Solicitor-General, each of whom afterwards became Lord Chancellor.

(2.) On the ground that the Crown had an undoubted right to add to the boundaries of the Province, and that if the boundaries given to it by the Commissions are not the identical boundaries which the Statute provided for, and which were thereby to continue during His Majesty's pleasure, and if the Commissions assigned to the Province a larger area than the Statute had described, the Crown had the right to make and did make the addition.

By the Treaty of Paris between Great Britain and the United States, in 1783, it was agreed that the boundary between the two countries should be a line, therein particularly described, from the north-western angle of Nova Scotia, through Lakes Ontario, Erie, Huron, Superior, Long Lake, &c., to the Lake of the Woods, "thence through the said Lake [of the Woods] to the most north-western point thereof, and from thence on a due west course to the River Mississippi, &c."

The Commission to Sir Guy Carleton after this Treaty, (dated 22nd April, 1786) followed this description in giving the boundaries of the Province, and assigned as its southerly boundary a line "to the said lake to the most north-western point thereof, and from thence on a due west course to the River Mississippi; and northward to the southern boundary of the territory granted to the Hudson Bay Company

A due west line from the point indicated would not intersect what is now known as the Mississippi, and therefore what was then known as the Mississippi, or the first tributary so intersected, the waters of which flow into the Mississippi, may be taken as intended. This question is very fully discussed in Mr. Dawson's paper. If that view should not be sustained, the alternative is the course taken under the treaty with the United States, of 1794, 1814, 1818 and 1842.

The Constitutional Act, 1791, the Act providing for the division of the Province of Quebec, recited that "His Majesty had been pleased to signify, by His Message to both Houses of Parliament, His Royal intention to divide His Province of Quebec into two separate Provinces, to be called the Province of Upper Canada and the Province of Lower Canada," and the Act made provision for the Government of each Province after the division should take place. A paper had been presented to Parliament previous to the passing of this Act, describing the line proposed to be drawn for dividing the Province of Quebec into two Provinces. This paper traced the line of division into Lake Temiscaming, "and from the head of the said lake by a line drawn due north until it strikes the boundary line of Hudson Bay; including all the territory to the westward and southward of the said line, to the utmost extent of the country commonly called or known by the name of Canada."

On the 24th August, 1791, an Order-in-Council was passed, reciting among other things that this Paper had been presented to Parliament previous to the passing of the Act; and dividing the Province into two, according to the line of division mentioned in the paper.

On the 18th November, 1791, General Alured Clarke, Lieutenant-Governor and Commander-in-Chief of the Province of Quebec, issued a proclamation, in His Majesty's name, in pursuance of his instructions and of a provision for this purpose in the statute, declaring when the division should take effect (26th December, 1791) This proclamation recited as follows:—

"Whereas we have thought fit, by and with the advice of our Privy Council, by our Order-in-Council, dated in the month of August last, to order that our Province of Quebec should be divided into two distinct Provinces, to be called the Province of Upper Canada and the Province of Lower Canada, by separating the said two Provinces according to the following line of division, viz.:—To commence at a stone boundary, [&c.,] running north twenty-five degrees east until it strikes the Ottawa River, to ascend the said river into the Lake Temiscaming, and from the head of the said lake by a line drawn due north until it strikes the boundary line of Hudson Bay including all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada.

That the country then commonly called or known by the name of Canada, comprised the whole of the territory formerly claimed against the Hudson Bay Company, and now claimed by Ontario, is established by abundant testimony.

On the 12th September, 1791, a Commission issued to Lord Dorchester, this being the second Commission issued after the Treaty of 1783. It recited the Commission of 22nd April, 1786, to the same Governor-General (as Sir Guy Carleton), the Order in Council of 19th August, 1791, dividing "the said Province of Quebec" into two separate Provinces by a line therein specified: "the Province of Upper Canada to comprehend all such lands, territories and islands lying to the westward of the said line of division as were part of our said Province of Quebec." This form of expression shows that Quebec was supposed and intended to include all the territory belonging to England, and formerly known as Canada; for it is not to be supposed that there was an intention so soon to give to the Province narrower bounds than were indicated by the paper presented to Parliament, adopted afterwards by the King in Council and declared by the Proclamation of Governor Clarke. The change of expression was probably suggested by taking note of the language of the Treaty of 1763, by which, while France ceded to England "Canada and all its dependencies," the cession was subject to a limitation. The watershed of the Mississippi and Missouri had been the boundary line between Canada and Louisiana, and that part of Canada which was west of the Mississippi was reserved to France. So, by the Treaty of 1783 a further part of Canada was ceded by England to the United States. A description, therefore, in 1791, of the Province of Quebec, or of Upper Canada, which would purport to give to the Province all "the country commonly called or known by the name of Canada," would not have been correct. A form of expression was therefore substituted which was free from this difficulty.

The subsequent Commissions to the Governors General of Canada, up to and including that of Lord Gosford, in 1835, and the Imperial Commission to Mr. Caldwell as Receiver General of Lower Canada, assigned the same line of division between Upper and Lower Canada.

In the seven subsequent Commissions, from the Commission to the Earl of Durham, 30th March, 1838, to the Commission to Lord Elgin, 1st October, 1846, inclusive, and also in the two Commissions to Sir John Colborne and the Right Honorable Charles Poulett Thomson, as Captains General and Governors-in-Chief of Upper Canada, dated the 13th December, 1838, and 6th September, 1839, respectively, the line of division between Upper and Lower Canada is stated to read the shore of Hudson Bay, "by a line drawn due north from the head of said Lake Temiscaming, until it strikes the shore of Hudson Bay." The expression "shore of Hudson Bay" obviously has the same signification as "boundary line of Hudson Bay," but if the latter expression could be supposed to refer to some line south of the shore, the subsequent Commissions must be taken as having extended the boundary to the shore. These two Commissions trace the western boundary into Lake Superior and no further, saying nothing of the line thence westerly or northerly; but of course nobody has ever supposed that the southerly boundary of the Province terminated as soon as Lake Superior was reached.

[The Commissions subsequent to Lord Elgin's contain no boundary line descriptions. The other Commissions to the Lieutenant-Governors of Upper Canada, which have been examined, either do not give the boundaries of Upper Canada or give them partially only, and in such a manner as throws no light on the present question. So also the Commissions after the Union do not give the western boundary of the Province of Canada. The Act of Union, 1840, does not specify the boundaries of the Province of Canada thereby created, but describes the new Province of Canada as constituted of the former Provinces of Upper and Lower Canada.]

Now the Province of Upper Canada, from a period long antecedent to its Union with Lower Canada, and the Province of Canada afterwards, acted, whenever there



was occasion, on the assumption that the boundaries of the Province were those assigned by Royal Commissions, thus :

(1.) The Province of Upper Canada is known to have been in the habit, since, at all events, 1818, of issuing writs into the territory west of the line of  $89^{\circ} 9\frac{1}{2}'$ .

(2.) In 1850, the Province of Canada, with the sanction of the Imperial authorities, entered into a treaty with the Indians, and procured from them the surrender of the rights of the Indians in the territory as far west as Pigeon River. This territory, it may be observed, is south of the height of land, and was never claimed by the Hudson Bay Company, though it is now claimed on behalf of the Dominion.

(3.) From the year 1853, the Province of Canada, continuously, and without objection from any quarter, made grants of lands, in the Queen's name, in this territory, and west of the proposed line of the Dominion. Between 1853 and Confederation no less a quantity than 35,059 acres had thus been granted west of that line. Numerous mining licenses in the same territory were granted in like manner, commencing with the year 1854, the territory embraced in them extending to Pigeon River.

(4.) In 1863 the Government of the Dominion appropriated \$20,000 towards the construction of a road from the Lake of the Woods to Fort Garry on Red River ; and the money was spent accordingly.

So far as relates to Ontario's western boundary, it is unnecessary to consider for the present purpose the argument as to the Hudson Bay Company owning this territory ; because the extension to the southerly boundary to the west is not, either by the statute or by the subsequent Acts of the Crown, made to depend on the Company's having or not having the territory to which the western extension of the southerly boundary would bring us ; and the Crown of course had the power to include part of the territory of the Company, if such was the Royal will. But the fact that this western territory had been discovered, explored, traded with, occupied and taken possession of by the French before the Treaty of Cession adds strength to Ontario's claim, even in respect of the western boundary.

The decisions of a Lower Canadian Court, in 1818, in the case of *de Reinhard and McLellan* have been cited in favor of the line drawn due north from the confluence of the Ohio and Mississippi, and stated in the evidence in that case to be  $88^{\circ} 50'$  or  $88^{\circ} 58'$ . The principal evidence, however, on which a different conclusion is based was not before the court or referred to in those cases ; and it is said also that the prisoner *de Reinhard*, was pardoned (though clearly guilty of murder), and that the reason of his pardon was, that (notwithstanding the supposed decision of the court to the contrary) the place of committing the murder was within Upper Canada, and, therefore not within the jurisdiction of the court under the statute 43, Geo. III., c. 138, on the authority of which the court was acting.

In view of all these considerations, it is apparent that if there is any difficulty on the westerly side of the Province, it is as respects the territory west of Lake of the Woods. Is the western line further west than this lake ? Is the point of commencement the point on the first tributary of the Mississippi which a line due west from the most north-western point of the Lake of the Woods strikes ? Or does the western limit extend to the Rocky Mountains ?

Then as to the northern boundary.

It has been already stated that the Quebec Act, and such of the Royal Commissions to the Governors, previous to 1838, as mention the northern boundary, specify for that purpose the southerly boundary of the territory granted to the Hudson Bay Company, and the principal difficulty here is that the southerly boundary of this territory has always been an unascertained line.

The claim of the Dominion is that the boundary is the height of land already described. It is submitted for the following among our reasons, that the height of land is not our northern boundary :

(1.) Because the easterly and westerly lines assigned to the Province, by the Royal Commission, cut through and go north to the height of land ; and the Commission issued in 1791, and such of the subsequent Commissions as mention the northern

boundary, thereby declared in effect, that the southerly boundary of the Company's territory was not south of those points, viz.: the south shore of Hudson Bay (then called James' Bay), and the most north-western point of the Lake of the Woods; and was north of the height of land.

(2.) Because the height of land was not claimed or suggested by the Company as being the intention of the charter, or as being the measure of the Company's just rights, until nearly a century and a half after the date of the charter. This fact is a practical contemporaneous exposition of the statute by the Company themselves against their recent claim, and having been continued for 150 years is, without other evidence, conclusive.

(3.) Because the alleged rule that the discovery and possession of the shore of a new country gives a right to the rivers and the land adjoining the same, if a recognized rule now, was not such at the time of this charter being granted, and ought not to govern its interpretation. The rule is said to be founded on reason and necessity, but there is no just reason or necessity for applying such a rule in the case of a river nearly 3,000 miles long.

(4.) Because the French from the beginning of the seventeenth century were in possession of the territory to the south of the lands watered by the rivers flowing into Hudson Bay, and were extending their explorations and settlements to the head waters of the rivers flowing into Hudson Bay and to the interior of the country, there is no sound reason to sustain a rule for giving to the discoverers of the Bay into which these rivers flow, a right to stop such explorations and settlements in favor of discoverers (if the English were such), who did not choose to occupy the interior of the country. The rule as to rights to unoccupied contiguous territory is in such case more than sufficient to outweigh the supposed rule as to the height of land.

(5.) Because the ground of the recent claim is that the English were the first discoverers, and that their discoveries were followed by such possession of the territory in question as the laws of nations recognize as giving a title to the territory up to the height of land; while the fact is that it is impossible to say with certainty who were the first discoverers, nor was the alleged discovery by the English followed by possession. The voyage of Cabot, when he entered the Bay, is said to have been in 1517, and no sort of possession of any part of the Bay by the English before 1667 is pretended, being an interval of 150 years. Gillam is said to have built, in 1667, Fort Charles (Rupert), which was on the east side of the Bay. In the meantime the Bay had become known to the world; persons acting under the authority of the French Government had repeatedly visited it, had taken possession in the French King's name, and set up the Royal arms there; the French had established posts at convenient points for trade with the Indians, and had secured and were engaging the whole trade with the Indians around the Bay. In 1627 the King gave to the Company of New France the right of trade to an extensive territory, including Hudson Bay, both along the coasts and into the interior. Under such circumstances the rule invoked by the Dominion has no application.

What then is to be regarded as the southerly boundary of the territory of the Company?

The language of the charter, by reason of its ambiguity, affords no assistance in this enquiry. The validity of the charter has always been questioned on the ground of its ambiguity as well as for other reasons. Some legal opinions have, indeed, been given in favor of the validity of the charter as respects the whole territory to the height of land claimed in recent times by the Company, but these opinions were based upon the Company's statement that they had "always claimed and exercised dominion as absolute proprietors of the soil, in the territory understood to be embraced by the terms of the grant."

(1.) Assuming, however, that the northern boundary is on one side the shore of Hudson Bay, say between  $51^{\circ}$  and  $52^{\circ}$  of latitude, and on the other at least as far north as the most north-western point of the Lake of the Woods, say latitude  $49^{\circ} 23' 55''$ : if these points were in the Hudson Bay territory, the northern bound-



ary would be a line drawn from one of these points to the other. We claim that our boundary is further north than this, but it cannot be south of it.

Are these points in what was the territory of the Company? And is the provincial boundary therefore no further north?

(2.) If by reason of the charter being so old, and having been acted upon in some sort, and of its validity to some extent being implied in certain statutory references to the Company, the instrument cannot be treated as absolutely void; it must, as regards its construction and operation, on well known and well settled principles, be interpreted most strongly against the Company, and in favor of the Crown; the object of giving the charter was to encourage discoveries by the Company; and the validity or operation of the instrument is to the extent only of giving to the Company whatever of the unknown territory the Company, within a moderate and reasonable time, should occupy; and all that the Company could be entitled to was what the Company had, in this manner, acquired for themselves and for the Crown, previous to the cession of Canada in 1763 by France to England; or whatever, previous to that time, the Company had been in possession or engagement of as their own with the concurrence of the Crown.

(3.) The Company were certainly not entitled to any of the territory which France owned at the time of the cession, and ceded to England; for it is preposterous to suppose that the charter intended to grant, and did effectually grant, to the Company, as against the world, all the territory southerly and westerly of the Bay to the then unknown height of land (unknown to the Crown and to the Company), though such territory should be, as it was, to the extent of unknown hundreds of thousands of square miles—a third of the continent; that the charter was intended to give, and did give, to the Company, the right to shut up this enormous territory from the Crown and from all British subjects, and from other nations also, for all time; that if the Company should do nothing to discover, settle or acquire it for a hundred years or more, nobody else could; and that any portion of it which England should, a hundred years afterwards, acquire by war with another nation, and by employment of the resources of the whole Empire, in Europe as well as America—acquired when so acquired and was intended to accrue to the Company for their own private benefit.

(4.) It is clear, and indeed has been repeatedly admitted by the Company themselves, that until long after the date of the cession, the Company had no possession of any part of the interior of the country, and that their possession was confined to certain forts on the Bay and two factories not very distant.

(5.) On the other hand, the Dominion Ministers truly affirmed in 1869, that “the evidence is abundant and conclusive to prove that the French traded over and “possessed the whole of the country known as the Winnipeg Basin and Fertile Belt, “from its discovery by Europeans down to the Treaty of Paris, and that the Hudson’s “Bay Company neither traded nor established posts to the south or west of Lake “Winnipeg until many years after the cession of Canada to England.” In fact, the Company’s first post, viz. : Cumberland House, on Sturgeon Lake, in the vicinity of the region in question, was not built until 1774, and they did not establish any post within this tract of country before 1790.

(6.) The following facts (amongst others) were judicially found by Judge Monk, in *Connolly vs. Woolrich*, with respect to the proceedings of the French, before the Hudson Bay Company’s charter was granted. He showed that as early as 1605, Quebec had been established and had become an important settlement; that before 1630 the Beaver and several other companies had been organized at Quebec for carrying on the Fur Trade in the west, near and around the Great Lakes and in the North-West Territory; that the enterprise and trading operations of these French Companies, and of the French Colonists generally, extended over vast regions of the northern and north-western portions of the continent; that they entered into Treaties with the Indian tribes and nations, and carried on a lucrative and extensive fur trade with the natives; that in the prosecution of their trade and other enterprises these adventurers evinced great energy, courage and perseverance; that they had extended

their hunting and trading operations to the Athabasca country (say  $58^{\circ}$  north latitude and  $111^{\circ}$  west longitude), that some portions of the Athabasca country had before 1640 been visited and traded in, and to some extent occupied by the French traders in Canada, and their Beaver Company (which had been founded in 1629); that from 1640 to 1670 these discoveries and trading settlements had considerably increased in number and importance; that Athabasca and other regions bordering upon it, belonged to the Crown of France, at that time, to the same extent, and by the same means as the countries around Hudson's Bay belonged to England, viz. : by discovery and by trading and hunting.

(7.) It may be added, that if the Athabasca country thus belonged to France at so early a period, so would the whole intermediate country between Athabasca and Hudson Bay on the west, and between the Athabasca country and the St. Lawrence on the south.

(8.) Between 1670 (the last date named by Judge Monk) and 1763, the French established posts or forts in that North-West Territory which they had previously explored, and hunted over and traded with; namely, on Rainy Lake, the Lake of the Woods, Lake Winnipeg, Lake Manitoba, on the Winnipeg River, the Red River, the Assiniboine River, the River aux Biches, and the Saskatchewan, and so west to the Rocky Mountains. Where Fort la Jonguière was established by St. Pierre in 1752. All the lakes and rivers mentioned are connected by the Nelson River with Hudson Bay, and are in the territory which, in the following century, the Hudson Bay Company claimed under their charter; but confessedly they had constructed in it no post or settlement of any kind until long after 1763. Their first post away from the Bay (other than the two factories already mentioned) having been established in 1774, it was not until 1790 that they had any post in the Winnipeg Basin; and they did not enter the Valley of the Red River until long afterwards.

(9.) France had also, on the northerly side of the dividing line, Fort Abbitibi, which was north of the Height of Land, and was built in 1686. It was situate at a considerable distance north of the height of land, and upon the lake of the same name, from which the River Monsippy flows into Hudson Bay. The French had also Fort St. Germain, on the Albany, which was built in 1684; and still higher up, on the same river, Fort La Mane, established about the same period; and, to the east, Fort Nemiscan, on the lake of that name, situate on the River Rupert, midway between Lake Mistassin and the Bay—this fort was built before 1695. Of none of these did the English Government or the Company ever complain. The French had also another fort on the Albany, being that mentioned in one of the memorials of the Company as having been built in 1715.

(10.) The Company furnished certain maps for the purpose of the present arbitration, two of which only seem of importance on either side. One of these two bears the Royal Arms and those of the Company; is of the date of 1748, and seems to have been prepared by the Company in view of the parliamentary enquiry of that year, and for the purpose of showing the limits which the Company then claimed. The line which this map gives as the Company's southern boundary is considerably north of the height of land, even as shown on this map; for the line is therein made to cut Frenchman's River, a river not named on this map, but corresponding with the Abbitibi River, and several other rivers shown on the map as flowing into Hudson Bay. The line runs to Lake Winnipeg (which is misplaced, being represented as due north of Nepigon, its southern point in the latitude of Fort Wilson), thence northerly along the easterly shore of Winnipeg, and thence northerly to Sir Thomas Smith's Sound, in Baffin's Bay. The map thus demonstrates that the Company, at the time of its preparation, did not claim to the height of land, even as the same was then supposed to be situated, and did not claim Lake Winnipeg.

The other of the two maps is Mitchell's engraved map, described as published by the author, February, 1755. This copy appears to have been much used and worn. There is on it an irregular line, marked, "Bounds of Hudson Bay by the Treaty of Utrecht;" and this line may therefore be taken as showing the extent of the Company's claim in 1755, and long after. The line is about one-third of a degree



north of the Lake of the Woods, and extends to the limit of the map in that direction, being about  $98^{\circ}$  of longitude. The territory south of this line is differently colored from the territory north of it.

It is evident that the Company have in their possession no maps which purport to give to them a larger territory than these maps do. Their claim to the height of land as the true intention of the charter and the true measure of their rights, so far from having been always made, was not thought of by the Company until more than half a century later, and was in effect negatived by the Crown in numerous commissions to the Governors of the country.

The maps produced show the extent of territory which the Company claimed prior to the cession of 1763.

It may be observed that on the occasions of the Treaties of Ryswick and Utrecht, the Company's claims were expressed either in the terms of the charter, or were simply to "the whole Bay and Straits of Hudson, and to the sole trade thereof." It sufficiently appears from the early documents which emanated from the Company, that this general claim to the whole Bay and Straits was a claim to the waters and shores only, and to the exclusion of the French therefrom—the French having been in possession of forts on the Bay until after the Treaty of Utrecht, and the Treaty of Ryswick having, in effect, given them possession of all places on the bay, except, it may be, Fort Bourbon; and that the Company's object was the trade of the Bay, and not the occupation or settlement of the country away from the shores of the Bay.

Indeed, in 1700, the Company, notwithstanding this claim, were willing to accept the Albany River as their southern boundary on the west side, and Rupert River as their southern boundary on the east side of the Bay. In 1701-2 they were content even with East Main River, and proposed it as a boundary; but both proposals were rejected by the French as being far more than the Company had any right to demand.

In 1711-12, the Company proposed a line to run from the Island of Grimington or Cape Perdrix, on the Labrador coast, south-westerly to and through Lake Mistassin. This line did not extend beyond the south-west shore of the lake; and though the Company made a demand for the surrender of the forts on the shores of the Bay, yet they do not appear to have made at that time any proposal as to a line on the west or south side of the bay.

Thus the only claims and contests of the Company at this period were about the margin of the Bay.

After the Treaty of Utrecht (1713), which gave to the British all lands, &c., "on the Bay and Straits, and which belong thereto," the Company, on the 4th August, 1714, proposed, for the first time, that the Mistassin line should go south-westerly to  $49^{\circ}$  "north latitude, \* \* \* and that latitude be the limit;" but as to how far to the west this line of  $49^{\circ}$  was to be followed, nothing is said.

In 1719 and 1750 the Company proposed the line of  $49^{\circ}$ , but both times the proposition was rejected by the French. This line would have given to the Company a boundary greatly more limited than the boundary of the height of land, which began to be claimed three-quarters of a century later.

It has already been said that the Company could not take advantage of their charter for the purpose of making any addition to their territory by exploration or settlement after the cession of 1763; but the practical result would be nearly the same if this right should be deemed to have ceased at a somewhat later date, viz., the date of the passing of the Quebec Act, 1774, or even the date of the Treaty of 1783. The Company made no further settlement between 1763 and 1783, except Cumberland House; and it is doubtful whether its locality belongs to the Winnipeg or the Churchill system. Both the Act and the Treaty obviously require that the southern boundary should be deemed a fixed line, not liable to variation by the mere act of the Company.

These considerations are submitted as showing that the strict legal rights of the Company did not extend beyond their forts on the shores or in the neighborhood of

the Bay, and such adjacent territory as these forts may have commanded; and that Ontario is entitled to have its northerly boundary line drawn accordingly.

Or, if the Company's territory is to be considered as extending beyond the forts on the bay and the immediately adjacent territory, their territory is not to be deemed south of the northern extremity of the dividing line between Upper and Lower Canada, or to exceed otherwise what England herself was entitled to under the Treaty of Utrecht, viz.:—the middle line between the forts and settlements of the English and French; and, further, is not to include a greater area than is shown on the maps furnished by the Company, in case the middle line would give them a larger territory than these maps claimed for the Company; for the reference in the Statute of 1774 to the territory granted to the Hudson Bay Company cannot, in any view, be construed as referring to a more southerly line than the Company had theretofore claimed for themselves.

Or, if there is too much doubt as to the southern boundary of the Company's territory to determine, with precision, where such boundary was, a northern boundary should be assigned to the Province which would give to the Province the full territory which the Commissions to the Governors definitely provided for, and, in addition, such further territory to the north as may be just and reasonable.

O. MOWAT,

*Attorney-General of Ontario.*

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7.—REPORT OF PROCEEDINGS BEFORE THE ARBITRATORS IN THE  
MATTER OF THE BOUNDARIES OF THE PROVINCE OF ONTARIO,  
AT OTTAWA, 1ST, 2ND, 3RD AUGUST, 1878.

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Arbitrators:

THE RIGHT HONORABLE SIR EDWARD THORNTON,  
THE HONORABLE SIR FRANCIS HINCKS, AND  
THE HONORABLE THE CHIEF JUSTICE OF ONTARIO.

Counsel for Ontario:

THE HON. OLIVER MOWAT, A.G., ONT., AND MR. THOMAS HODGINS, Q.C.

Counsel for the Dominion:

MR. HUGH MACMAHON, Q.C., AND MR. E. C. MONK.

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OTTAWA, Thursday, August 1st, 1878.

The Arbitrators met at noon, but in consequence of the absence of Sir Francis Hincks, the transaction of business was postponed until the following day.

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FRIDAY, August 2nd, 1878.

Arbitrators and Counsel all present.

The Hon. OLIVER MOWAT, Attorney-General of Ontario, opened the case for Ontario. He said:—

I have embodied in the printed "Statement of the Case of the Province of Ontario," the substance of the principal grounds on which I think that the Pro-



vince is entitled to the bounds northerly and westerly which we claim. I have also, for facility of reference, had printed in a book, of which the Arbitrators have copies, the statutes, documents and other matter which seemed to bear on the subject, whether favorably or unfavorably to our claim. I do not mean to attempt now an exhaustive statement of all that is material, but purpose confining myself to stating some grounds which seem to me to be quite sufficient, and more than sufficient, to sustain our claim, although there are others of perhaps not less importance, that might be dwelt upon. I do not mean even to answer at present all the points which have been set forth in the case for the Dominion; some of them I shall refer to, and if any of those not referred to seem to make any impression upon the Arbitrators, I shall have an opportunity in my reply to remark upon these.

The 6th section of the British North America Act provides, that that part of the Province of Canada "which formerly constituted the Province of Upper Canada, shall constitute the Province of Ontario;" the Province of Canada was by the Union Act of 1840 constituted of the Provinces of Upper and Lower Canada. The line of division between these Provinces had been settled in 1791 by an Order in Council, and extended in manner therein described to the "boundary line" of Hudson's Bay. By the same Order in Council, Upper Canada was to include "all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada." All of the Province of Canada which lies west of the line of division belongs to Upper Canada, as all which lies east of the same division line belongs to the Province of Quebec. Ontario has the same limits as Upper Canada had, and the same limits as west of the division line the Province of Canada had, and as the Dominion of Canada had before its purchase of the rights of the Hudson Bay Company. In 1870 the Dominion acquired these rights, as also the "North-Western Territory," in addition to the territory which the Province of Upper Canada and the Province of Canada had had. The question for the Arbitrators is as to the westerly and northerly boundaries of the Province of Ontario, or of the Province of Upper Canada.

It will be convenient, before entering upon the argument, to point out upon the produced map by Mr. Devine the principal points which come in question in the discussion. This map has been prepared to assist the Arbitrators in following the arguments addressed to them. It is in the main correct, although I have discovered two or three unimportant inaccuracies. On this map is marked the line of division between Upper and Lower Canada, which line runs northerly into Lake Temiscaming, and thence due north to the boundary line or shore of Hudson Bay. In regard to that line I suppose there will be no dispute.

The westerly boundary of the Province, according to the present claim of the Dominion, has also been marked upon the map; it is a line drawn due north from the confluence of the Ohio and the Mississippi, and in longitude about  $89^{\circ} 9\frac{1}{2}'$ . The provisional line of 1874 is the next on the map westward, but is not of any importance for our present purpose; it was found necessary, until the right boundary should be decided, that a line should be agreed upon provisionally, to the east of which the Province should make its grants of land, and to the west of which grants by the Dominion might be made. (Book of Documents, p. 347.) The next line westwardly is that running to the most north-western angle of the Lake of the Woods, near the Province of Manitoba; that point is very nearly in the meridian of Turtle Lake and of Lake Itasca, both of which lakes have been regarded as sources of the Mississippi, and are very nearly in the same longitude.

Ontario claims that it is clear that its western boundary line is no farther east than the meridian of the most north-western angle of the Lake of the Woods, and that the only question on the western side of the Province is as to how much (if any) territory we are entitled to west of that meridian.

With regard to the northern boundary, we claim it to be certain that it is not south of the shore of James' Bay, or of the most north-westerly point of the Lake of the Woods; as to the exact extent of the Province to the north of those points there may be more difficulty. The Statute of 1774, usually called the "Quebec Act," added

a considerable territory to the Province of Quebec, and purported to give as the northern boundary of that Province, the territory granted to the Hudson Bay Company; how far that territory extended has never been definitely ascertained. We have examined whatever documentary evidence there is which might throw light on this question, and we have also had a pretty exhaustive examination made of the various maps published before the present century. An analysis of the maps has been printed at p. 135 and on subsequent pages of the Book of Documents; and the produced map by Mr. Devine shows the principal lines. The most northerly is one which, in 1701, the Hudson Bay Company unsuccessfully claimed for its southern boundary; and the next is the line they had asked for without success in the previous year, 1700. All of the other northerly lines marked on this map are at the westerly side placed to the north of the Lake of the Woods; most of them are several hundred miles to the north of that lake; while on the east they are south of James' Bay and of the point to which the Royal Commissions bring us there. None of these northerly lines has the authority of a treaty, or a statute, or an agreement. One line is marked on certain maps as "bounds of Hudson Bay by the Treaty of Utrecht;" but that was a mistake of the geographers; it must be admitted that the bounds were not settled by the Treaty of Utrecht.

The claim of Ontario is precisely the same as had always been made for the Province before the Dominion of Canada purchased the rights of the Hudson Bay Company. Controversies on the subject took place between the Hudson Bay Company and the Province of Canada, and afterwards between that Company and the Dominion of Canada. During these controversies able papers were written, wherein the claims of Canada were set forth; and I rely upon the arguments contained in these papers, though not now repeating them all.

Opinions of some learned lawyers having been given in favor of the claim of the Hudson Bay Company, these were controverted in the official papers on behalf of Canada; those opinions were given on inaccurate and partial representations of the facts; new evidence in favor of our claim has been obtained since; but upon the evidence collected before 1856, we have on our side the opinions of other eminent lawyers, and the opinion of the late Chief Justice Draper. The opinion of the Chief Justice was formed and communicated when he was in his prime; he was one of the ablest judges in Canada, and had given great attention to this subject. He was sent to England by the Canadian Government to watch over the interests of the Province; he had access to private sources of information, some of which we have been able to reproduce now; and the opinion that he formed was arrived at upon a fuller knowledge of the facts than had existed on the part of any court or counsel who had theretofore given attention to the matter, and whose opinions we are in possession of. The opinion was communicated to the Government here, not expressed in controversy with any adversary; and it is very cautiously expressed; it does not go as far as the Province was claiming; he did not think the evidence sufficient to give a line to the Rocky Mountains (as the Province claimed), but expressed the opinion—"a confident hope"—that a decision by the Privy Council would give "to Canada a clear right west to the line of the Mississippi, and some considerable distance north of what the Hudson Bay Company claim, though not any territory west of the westernmost head of the Mississippi River," which is very near the Rocky Mountains. The opinion will be found at page 391 of our Book of Documents.

Sir Edward Thornton.—The law officers of the Crown in England strongly recommended an appeal to the Privy Council, but that was not done. The writer of this extract seems to have expected that there would be a decision of the Privy Council, and I would like to know why the case was not referred.

Chief Justice Harrison.—It was probably delayed by negotiations.

The Attorney General.—There were constant negotiations going on from that time, and the matter was one which, however clear the right might be thought to be, it was considered desirable to settle by compromise.

Sir Edward Thornton.—But it was not compromised.



The Attorney General.—It was compromised twelve years afterwards. My learned friend, Mr. Hodgins, reminds me that one thing which prevented the reference was that the Government here thought the question ought to be referred by the British Government—that the Province ought not to have the responsibility of it; at all events, the delay was only twelve years from this time—not a great while to be negotiating about a continent of territory.

Mr. MacMahon.—I can answer further in regard to that. The Province of Canada refused to submit anything but the validity of the Charter of the Hudson Bay Company to the Council; they refused to submit the question of the boundaries.

The Attorney-General.—The adverse opinions were founded upon the Company's *ex parte* statements of the facts, and one of the allegations was that the Hudson Bay Company had been always in possession of the territory. Now, it is a familiar principle with regard to old statutes or charters, that the interpretation of them is governed by the contemporaneous exposition they received, and by the acts of the parties under them. If the fact was that, from 1670 to the time when these opinions were called for, there had been an actual possession by the Hudson Bay Company of the whole territory which they claimed, there could be little question of their right to such territory. It would be absurd to suppose that, as a matter of law and legal construction, the Company could be deprived of property which they had for nearly two centuries "claimed and exercised dominion over" under their grants, as absolute and undisputed proprietors of the soil. But we deny that there was any such claim, dominion or possession by the Company of the territory now in question for more than a century after 1670; the principal ground upon which the opinions referred to must have proceeded was not in accordance with the facts. We have in our book the Company's statement. I refer to page 288: "Under this grant the Company have always claimed and exercised dominion as absolute proprietors of the soil in the territories understood to be embraced by the terms of the grant, and which are more particularly defined in the accompanying map; and they have also claimed and enjoyed the exclusive right of trading in those territories." The map referred to claims up to the height of land. No lawyer, upon that statement, could come to any other conclusion than did the law-officers. In some of the earlier as well as the more recent of the legal opinions, express reference was made to the importance of knowing how much of this territory had been in possession of the Hudson Bay Company, and it was stated in them that an old charter of this kind, especially an ambiguous one, should not be interpreted without reference to that fact.

No adverse legal opinions has been given on the facts that are now before the Arbitrators. On the other hand, we have the opinion of a very distinguished Judge, who was aware of all the material facts in favor of the Company's contention—although not of all the facts in favor of the Province—and who gave that opinion after having been exclusively occupied several months with the subject. However the Arbitrators are not bound by that opinion. They will give whatever weight they may consider due to it; but they will consider for themselves whether the opinion was right or wrong.

On entering now upon some discussion of the evidence, I submit that, inasmuch as the Province of Ontario is now claiming what had always been claimed before by the Province of Canada and by the Dominion of Canada likewise, I am entitled to ask the Arbitrators to take that claim as *prima facie* correct and well-founded. The Dominion is one of the two parties to this controversy, and we put in evidence the official statements of the representatives of the Dominion repeatedly made; we show what position they took in regard to this question, what assertions they made, and what they claimed, up to the very last moment before becoming purchasers of the Hudson Bay Company's rights. I do not say that this is conclusive, that it estops the Dominion from saying that their contention had been wrong, false or mistaken but I do say that their demands before buying out the Company throw the burden on the Dominion of showing that in all these antecedent discussions and statements they had been wrong. I start with the strongest presumption in my favor when I show that before they made that purchase the Dominion of Canada had taken the position

which I now take, had made the assertions which I now make, had used many of the arguments which I now use, and had considered that those arguments were incapable of being answered. To take a single example, what did the Dominion Ministers say in their letter to the Colonial Minister on the 16th January, 1869? (Book of Documents p. 324.) They expressly claimed "that the boundaries of Upper Canada on the north and west," included "all the territory to the westward and southward of the boundary line of Hudson Bay to the utmost extent of the country commonly called or known by the name of Canada," and that "whatever doubt may exist as to the utmost extent of old or French Canada, no impartial investigator of the evidence in the case can doubt that it extended to and included the country between the Lake of the Woods and Red River."

But I shall show that, if I had no presumption in my favor, the conclusions which I desire the Arbitrators to arrive at are the conclusions which they cannot but arrive at in view of all the facts.

In 1763 France ceded to England "Canada with all its dependencies," reserving only such part of what had been known as Canada as lay west of the Mississippi. The treaty will be found at page 18 of our Book of Documents. The watershed between the Missouri and the Mississippi Rivers had been the boundary between Canada and Louisiana when both were owned by France, and by the treaty of 1763 the River Mississippi was agreed to as the future boundary between the English and French possessions in that quarter; the language of the treaty being, "that the confines between (France and England) in that part of the world shall be fixed irrevocably by a line drawn along the middle of the River Mississippi from its source (etc.), to the sea." Very soon after this treaty, viz, on the 7th October, 1763, the Province of Quebec was erected by Royal Proclamation, but the Province as then constituted, took in very little of what was afterwards Upper Canada and what is now Ontario; the most north north-westerly point was Lake Nipissing; the whole of the territory adjacent to the great lakes was excluded. In 1774 the boundaries of Quebec were enlarged by the Quebec Act. That Act recited that "by the arrangements made by the said Royal Proclamation, a very large extent of territory, within which were several colonies and settlements of subjects of France, who claimed to remain therein under the faith of the said treaty, was left without any provision being made for the administration of civil government therein." The Act therefore provided that "all the territories, islands and countries in North America belonging to the Crown of Great Britain, bounded on the south by a line" therein described from the Bay of Chaleurs to the River Ohio, and along the bank of the said river westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchant Adventurers of England trading into Hudson Bay," etc., "be, and they are hereby, during His Majesty's pleasure, annexed to and made part and parcel of the Province of Quebec as created and established by the said Royal Proclamation of the 7th October, 1763." What territory was embraced in this description? The Dominion contends now that the expression "northward to the southern boundary" of the Hudson Bay Territory, meant a line drawn from the confluence of the two rivers due north, which would be in longitude about 89 deg. 9½ min. west, that the old Province of Quebec contained no territory west of that line, and that the Province of Upper Canada or the Province Canada contained none. The only pretense for this argument is the word "northward" in this Statute. Reasons as strong and indisputable as possible in favor of a more westerly boundary are afforded by the other language of the Statute, by the surrounding circumstances, and by subsequent transactions.

Look first at the Statute itself. It will be found at page three of the book. The enactment is as follows:—"That all the territories, islands and countries in North America, belonging to the Crown of Great Britain, bounded on the south by a line from the Bay of Chaleurs," etc., "until it strikes the River Ohio; and along the bank of the said river, westward, to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchants Adventurers of England, trading to Hudson Bay; and also all such territories, islands and countries



which have, since the 10th day of February, 1763, been made part of the Government of Newfoundland—be, and they are hereby, during His Majesty's pleasure, annexed to and made part and parcel of the Province of Quebec as created and established by the said Royal Proclamation of the 7th day of October, 1763."

Now, in the first place, the word "northward" does not necessarily mean due north. In descriptions in the ordinary deeds and documents with which we are familiar, the word "northward" is constantly used as meaning any northerly direction—either due north, or towards the north-west or the north-east. Then, in another part of the description a corresponding word is used in the sense in which I say this word "northward" should be used, for after the description brings the line to the River Ohio, it goes on thus: "along the river *westward* to the banks of the Mississippi." Here the word "westward" is used, not in the sense of due west, but of a line following the sinuosities of the River Ohio. Further, we have in the same description the expression "directly west." We have thus a word corresponding to "northward"—namely, "westward"—meaning not due west, but in a westerly direction; and we have the words "due west" and "right line" when Parliament meant due west and in a straight line. These considerations remove any presumption that Parliament, when saying northward, must necessarily be taken to have meant due north. All the territories, islands and countries in North America belonging to the Crown of Great Britain, which were assigned in 1774 to the Province of Quebec, are bounded on the south by the line described to the banks of the Mississippi; and what we say is that "northwards" meant the whole territory northward from the south line so described. The south line is given, and the statute describes what territory that south line is intended to include—all the territories belonging to Great Britain northward to the Hudson Bay Company's territory.

The surrounding facts bearing on the question place the intention beyond doubt. First, observe that the recital declares the object of the Act to be, to give to the Province more extensive boundaries than it had by the Proclamation: "Whereas by the arrangements made by the said Royal Proclamation, a very large extent of territory, within which were several colonies and settlements of the subjects of France who claimed to remain therein under the faith of the said Treaty was left without any provision being made for the administration of civil government therein." Where were these colonies and settlements? There is no room for question that if you take the due north line as the westerly boundary you do not include in the Province many of these French colonies and settlements. A large number of them, containing a large population, are given in Mr. Mill's book; and by looking at the produced map by Mr. Devine, the Arbitrators will see the number of forts which, with the populations in their neighborhood, would be excluded. It is thus an historical fact, utterly beyond controversy, that a line due north from the confluence of the Ohio and Mississippi, would leave between that line and the Mississippi northward a large number of the colonies and settlements for which it was intended by the statute to provide civil government. Assume that the word northward is ambiguous, as certainly it does not necessarily mean due north, we remove all doubt by showing from the statute what the intention was, and by showing that that intention would not be carried out by a due north line.

Further, if I had not the recital in the statute; if I did not know from history that there were colonies and settlements there, which the recital shows that it was intended to include; if all I knew was that we had this ambiguous word, and that the British possessions at the time of the passing of the Act extended along the banks of the Mississippi to its source, that fact would afford sufficient ground for presuming that the word "northward" was intended to include whatever British possessions there were there.

"In the interpretation of statutes, the interpreter must, in order to understand the subject matter, and the scope and object of the enactment, call to his aid all those external and historical facts which are necessary for the purpose." (Maxwell on Statutes, pp. 20-21.) It is presumed that the circumstances which led to the Act, the Bill introduced, and the proceedings of Parliament thereon, can be looked

at for the purpose of the present controversy, as the discussions on the negotiations for a treaty are looked at to remove any doubt to which the language of the treaty might give rise. The proceedings in Parliament are printed at page 299 of the Book of Documents; and the debate on the Bill shows that, as a matter of fact, the intention of the measure was understood on both sides of the House to be that the Mississippi, and no due north line, should be the western boundary. The Bill originated in the Lords, and the Bill as it came down from that House, was clear as to the Mississippi being the western boundary. The Bill described the Province as "all the territories, etc., heretofore forming a part of the territory of Canada in North America, extending southward to the banks of the river Ohio, westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the" Hudson Bay Company. (Page 302.) Under that description the present question would not be arguable. There is no reference there to a due north line from the confluence of the Ohio and Mississippi, and it will not be argued that any territory there, belonging to Great Britain, was to be left without any government or without any provision made by the statute for its government.

The description was altered in the Commons. Why was it altered? Was it in order that the banks of the Mississippi should not be the western boundary? By no means; no member objected to that boundary. It appears beyond question from the debate, that all parties, those in favor of and those opposed to the Bill, concurred in regarding the western boundary as being properly the Mississippi River to its source (that being, as I have said, the boundary also between the possessions of France and England), and that the only reason for the change was the desire of Mr. Burke—who was at that time agent for the Province of New York—to settle the boundary between the Province of Quebec and the Province of New York. He thought that the Province of New York might suffer if the Crown was left to settle its boundaries, and he, therefore, wanted the statute to settle them; but no proposal was made by him or by anybody else that the territory of the Province of Quebec should be less extensive towards the west. We have Mr. Burke's letter, written after the Act had passed, and in which he gives an account to his constituents of the Province of New York of what he had done for them. He points out what was wrong in the Bill as first introduced, namely, the difficulty as between the French Province of Quebec and the English Province of New York—in a region of country far away from the Mississippi; and he tells what he did for the purpose of removing that difficulty. His letter is dated 2nd August, 1774, and is printed at page 384 of the Book of Documents. He told his constituents that he thought they "might be very much affected by" the clause as it stood in the Bill as it passed the Lords; and explained "the conduct which (he) held in consequence of that view of (their) interests." He informed his clients that "the predominant and declared opinion" was, that "any growth of the [English] colonies which might make them grow out of the authority of this kingdom, ought to be accounted rather a morbid fullness than a sound and proper habit;" that the prevailing idea was to restrain "the colonies from spreading into the back country;" and "that the lines of the plan of policy . . . just mentioned were very distinguishable in the Bill as it came down to" the House of Commons, and that he had in consequence procured the alterations which had been made in the House of Commons. "That (it) was not (as it might be between two ancient British colonies), a mere question of geographical distinction or of economical distribution, where the inhabitants on the one side of the line and the other lived under the same law and enjoyed the same privileges of Englishmen. But this was a boundary discriminating different principles of jurisdiction and legislation, where, in one part, the subject lived under law, and in the other under prerogative."

In the debate the great extent of this territory was objected to by Mr. Townsend, who said that the limits thereby assigned to Canada, and stated in the Bill to have been part of it, were greater than England and France had ever given to Canada. He was answered by Lord North as follows:—

"The first thing objected to by the honorable gentlemen is the very great extent of territory given to the Province. Why, he asks, is it so extensive? There are



added undoubtedly to it two countries which were not in the original limits of Canada as settled in the proclamation of 1763, one the Labrador coast, the other the country westward of (to?) the Ohio and Mississippi, and a few scattered posts to the west. Sir, the addition of the Labrador coast has been made in consequence of information received from those best acquainted with Canada and the fishery upon that coast, who deem it absolutely necessary for the preservation of that fishery that the Labrador coast should no longer be considered as part of the Government of Newfoundland, but be annexed to that country. With respect to the other additions these questions very fairly occur. It is well known that settlers are in the habit of going to the interior parts from time to time. Now, however undesirable, it is open to Parliament to consider whether it is fit there should be no government in the country, or, on the contrary, separate and distinct governments, or whether the scattered posts should be annexed to Canada. The House of Lords have thought proper to annex them to Canada; but when we consider that there must be some government and that it is the desire of all those who trade from Canada to these countries that there should be some government, my opinion is that, if the gentlemen will weigh the inconvenience of separate governments, they will think the least inconvenient method is to annex those posts, though few in population, great in extent of territory, rather than to leave them without government at all, or make them separate ones. Sir, the annexation likewise is the result of the desire of the Canadians, and of those who trade to those settlements who think they cannot trade with safety as long as they remain separate."

Attorney-General Thurlow said:—"The honorable gentlemen are mistaken if they suppose that the bounds described embrace, in point of fact, any English settlement. I know of no English settlement embraced by it. I have heard a great deal of the commencement of English settlements; but as far as I have read they all lie upon the other side of the Ohio. I know at the same time that there have been, for nearly a century past, settlements in different parts of all this tract, especially in the southern parts of it and in the eastern(? western) bounded by the Ohio and Mississippi, but with regard to that part there have been different tracts of French settlements established. As far as they are inhabited by any but Indians, I take those settlements to have been altogether French; so that the objection certainly wants foundation."

Solicitor-General Wedderburn said: "It is one object of this measure that these persons (the English) should not settle in Canada."

Mr. Burke said: "In the first place when I heard that this Bill was to be brought in on the principle that Parliament was to draw a line of circumvallation about our colonies, and to establish a siege of arbitrary power, by bringing round about Canada the control of other people different in manners, language and laws from those of the inhabitants of this colony, I thought it of the highest importance that we should endeavor to make this boundary as clear as possible. \* \* \* The noble lord showed me the amendment which by no means relieved my apprehensions. The reason why I feel so anxious is, that the line proposed is not a geographical distinction merely; it is not a line between New York and some other English settlement; it is not a question whether you shall receive English law and English government upon the side of New York, or whether you shall receive a more advantageous government upon the side of Connecticut; or whether you are restrained upon the line of New Jersey. In all these you will find English laws, English customs, English juries, and English assemblies wherever you go. But this is a line which is to separate a man from the rights of an Englishman. First, the clause provides nothing at all for the territorial jurisdiction of the province. The Crown has the power of carrying the greatest portion of the actually settled portion of the Province of New York into Canada. . . . The Bill turns freedom itself into slavery. These are the reasons that compel me not to acquiesce by any means either in the proposition originally in the Bill or in the amendment."

Lord Cavendish testifies in so many words that "the difference was whether a tract of country not inhabited should belong to New York or Quebec." The change made was by substituting a long clause drawn by Mr. Burke for the short descriptive

of the southern boundary which the Bill had contained. The following words of the Bill from the Lords, "extending southward to the banks of the River Ohio, and westward to the banks of the Mississippi," were cancelled, and for this description the one substituted gave to the province "all the territories, &c., in North America belonging to the Crown of Great Britain bounded on the south by the line [therein described] to the banks of the Mississippi,"—leaving untouched the remainder of the original description which was and is as follows:—"and northward to the southern boundary of the territory granted to" the Hudson Bay Company, which word "northward" clearly had not in the Bill meant a due north liminary line on the west (to its point of contact with the territory of the Hudson Bay Company), but had meant northward from the whole described boundary line to the whole southerly boundary of the Hudson Bay Company; and such southern boundary the Bill had constituted the northern boundary of the newly created Province. It is thus perfectly clear that the western boundary was, as a matter of fact, intended to be the line of the Mississippi to its source; that as to this there was no difference of opinion.

Then let us look at the subsequent transactions. I have referred to the commissions issued by the Crown immediately after the passing of the Act, and which constitute an authoritative contemporaneous exposition of what the statute meant. In the first commission issued to the Governor General of Canada after the passing of the Act, the boundaries of the new Province were described. The Commission was to Sir Guy Carleton, and it described the line word for word as the Act had described it, to the confluence of the Ohio and Mississippi, and northward, as in the Act, except that after the word northward the Commission had these words which are not in the Act, "*along the eastern bank of the said River*" (Mississippi) to (as in the Act) the southern boundary of the territory granted to the Hudson Bay Company. Thus we have a Royal Commission issued shortly after the Act, defining the Province as it was the royal will that it should be bounded, and expressly declaring that the line should be along the eastern bank of the Mississippi; such Commission having been prepared and issued on the advice of the very Ministers who were responsible for the statute and personally knew what it meant. That fact would possess great force, no matter who the Ministers were or who were their law advisers, and at this date must be held by any tribunal to free the question from a possibility of a doubt, on two grounds. First, because the Commission is, as I have said, a conclusive contemporaneous exposition of what the statute meant; and, secondly, because the Crown had a right to add to the territory of the Province. If the statute did not give the territory to the banks of the Mississippi, the Crown had, by virtue of the royal prerogative, a right to add to the limits of the Province; and the Commission in which territory up to and along the eastern bank of the Mississippi was given to the Province had the effect of giving to it that boundary, supposing that the statute had not given it.

Chief Justice Harrison—And providing the Crown had not given the territory to the Hudson's Bay Company already.

The Attorney-General—No; because the Crown had the right to place the territory in the Province, though it could be made to appear that the territory in some sense belonged to the Hudson Bay Company; they were only private persons. If the Crown had chosen to put the whole of the Hudson Bay Territory into the Province, the Crown had a right to do so. The present is not a question of property, but of government.

Chief Justice Harrison—That of course brings up the old question as to what right the Hudson Bay Company did acquire.

The Attorney-General—I mean that the Hudson Bay Company might have the fee, just as a private individual might have the fee in any portion of the territory of the Province; the Crown would not be interfering with their property by placing it under a certain government. That is all I am concerned about now. What I want to know is, how far our Province extends, and what territories are included under the government of the Province; the ownership of the soil may be a distinct question.

It is of some importance to know that the Law Officers of 1774 were men of great eminence. Lord Camden was the Lord Chancellor; Mr. Thurlow was the Attorney



General and he afterwards became Lord Chancellor; the Solicitor-General was Mr. Wedderburn, and he also afterwards became Lord Chancellor. The ministry had the highest legal assistance, and their Acts, on which I rely, are of the highest value. They more certainly show the intention than a mere exposition by a court, however able, whose members know nothing personally as to why an Act had been passed or what was meant by it; and a contemporaneous exposition by such a court would not be meddled with fifty years afterwards, not to speak of a hundred years afterwards.

The second Commission to a Governor General, after the passing of the Act, was to Sir Frederick Haldimand, and it defined the Province in the same way as the commission to Sir Guy Carleton had done.

I have said that the Crown had a right to include additional territory beyond that given by statute if the Crown thought proper. An illustration of this prerogative is afforded by this Act of 1774, which provides for additions to the Province of Quebec as theretofore given by the proclamation. The Act provides that these additions, which Parliament itself was making, were to continue during His Majesty's pleasure only; although Parliament was making an addition, the prerogative in regard to even that territory was not interfered with; and a *fortiori* the prerogative right of giving still further territory to the Province, was not intended to have been interfered with by the Act. As the statute provided that the additions thereby specified were to be during His Majesty's pleasure, if His Majesty's pleasure should interfere with that provision being carried out, it would so far be in effect a repeal of the Act, and would be a stronger exercise of the royal prerogative than a further addition to the territory provided by the statute would be.

The Constitutional Act of 1791 implies the same right of the Crown to exercise the royal prerogative in the arrangement of territorial limits. That Act was passed in contemplation of the division of the Province of Canada into the two Provinces of Upper and Lower Canada, and it made provision for the government of each of those Provinces. But the Act did not itself make the division; it provided that when the division was made, the government should be as the Act describes. This is the enactment: "His Majesty has been pleased to signify, by his Message to both Houses of Parliament, his royal intention to divide his Province of Quebec into two separate Provinces," etc. It was to be done, if done at all, by the royal prerogative. His Majesty might divide the Province into two in any way he chose; and all that Parliament did by the Act of 1791 was to provide that, in case of such a division by the Crown, each of the two sections should be subject to the Government which the statute provided for.

Another illustration of such an exercise of the prerogative is in the proclamation of 1763, whereby the Crown created four new Provinces; Prince Edward Island or St. John's Island, as it was sometimes called in those days, with the lesser islands, were added to Nova Scotia by the same prerogative.

Mr. Burke's letter to his constituents (printed in the Book of Documents) contains a reference to this matter—the paragraph is towards the foot of page 385. He says: "My next object of inquiry, therefore, was upon what principles the Board of Trade would, in the future discussions which must inevitably and speedily arise, determine what belonged to you and what to Canada. I was told that the settled uniform practice of the Board of Trade was this: that in questions of boundary, where the jurisdiction and soil in both the litigating Provinces belonged to the Crown, there was no rule but the King's will, and that he might allot as he pleased to the one or the other. They said, also, that under these circumstances, even where the King had actually adjudged a territory to one Province, he might afterwards change the boundary; or, if he thought fit, erect the parts into separate and new governments, at his discretion. They alleged the example of Carolina: first one Province; then divided into two separate governments, and which afterwards had a third, that of Georgia, taken from the southern division of it. They urged, besides, the example of the neutral and conquered islands. These, after the Peace of Paris were placed under one government. Since then they were totally separated, and had

distinct governments and assemblies. Although I had the greatest reason to question the soundness of some of these principles, at least in the extent in which they were laid down, and whether the precedents alleged did fully justify them in that latitude, I certainly had no cause to doubt but that the matter would always be determined upon these maxims at the Board by which they were adopted." Mr. Burke did not approve of the extensive claims of the Crown in the matter of prerogative, as maintained by the Board of Trade; he thought the doctrine was carried too far; still, he admitted that it was the uniform settled practice of the distinguished persons who constituted the Board of Trade to act on that principle. I find nothing against that view; there seems to be no doubt that the Crown had the legal power stated, and that, if the Quebec Act did not give to the Province of Quebec as large a territory as the commissions of the Governors afterwards provided for, these Commissions were sufficient to give the additional territory to the Province.

By the Treaty of 1783 (printed at page 19 of the Book of Documents), it was agreed between His Majesty and the United States of America that the boundary of the United States should be a line therein particularly described from the north-west angle of Nova Scotia, through Lakes Ontario, Erie, Huron, Superior, Long Lake, etc., to the Lake of the Woods, "thence through the said Lake (of the Woods) to the most north-western point thereof, and from thence on a due west course to the River Mississippi, etc. The effect of this was to transfer a further portion of what was formerly Canada, from Great Britain to the United States; it is in this Treaty that we have the first description referring to the Lake of the Woods. It is material to observe the language of the Commissions to the Governors General after this Treaty. The Commission to Sir Guy Carleton three years afterwards in giving the boundaries of the Province, followed this description of the Treaty, and assigned as the southerly boundary of the Province a line "to the said Lake of the Woods, thence through the said lake to the most north-western point thereof, and from thence on a due west course to the River Mississippi, and northward to the southern boundary of the territory granted to the" Hudson Bay Company. This was the first Commission issued after the Treaty, and will be found at page 49 of the Book of Documents. It is to be observed that a due west line produced from the most north-western point of the Lake of the Woods would not strike what is now known as the Mississippi, and as we find that to be so, what is to be done? Various views have been suggested. One is that the line should go on until it reaches the first tributary of the Mississippi.

Chief Justice Harrison—What was the Mississippi as then understood? That is the first enquiry.

The Attorney-General—I have had that marked on the map. Mr. Dawson, the Member for Algoma, has furnished me with an elaborate paper showing what the Mississippi was as then understood. (Ont. Documents, 273, 278.) On this part of the case, I rely on the arguments of Mr. Dawson, and of Mr. Mills in his book at page 67, without repeating them.

Chief Justice Harrison—They both treat it with great ability.

The Attorney-General—The matter is also discussed very ably in a paper by the Hon. Mr. Cauchon, Commissioner of Crown Lands, which has been printed at page 43 of the Book of Documents. If the Arbitrators fail to be satisfied with the reasoning of all these gentlemen, where is the line to go from that point? What alternative is there? When the difficulty on this point occurred between England and the United States, they agreed that the line should be drawn due north or south, as the case might be, to the line 49. This was by the Treaty of 1818, which will be found on page 21 of the Book of Documents. I shall advert to this point again.

I have referred to the Constitutional Act of 1791, and have read the recital in that Act to the effect that His Majesty had been pleased to signify his intention to divide the Province of Quebec. A paper was presented to Parliament before the passing of the Act, which described the line proposed to be drawn to divide the Province. (Docts., p. 411.) It traced the line of division into Lake Temiscaming, and hence "by a line drawn due north until it strikes the boundary line of Hudson



Bay; including all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada." That was the description of Upper Canada as given in this paper, laid before Parliament when providing for the Government of each of the two sections, and afterwards adopted by an Order in Council passed for the purpose of giving effect to the Act. In August, 1791, the Order in Council was passed, and it recited among other things that this paper had been presented to Parliament previous to the passing of the Act. It was, therefore, with the knowledge and concurrence of Parliament, that the Crown adopted the line of division which I have spoken of, and gave to Upper Canada all of old Canada which was to the westward and southward of the line or lines mentioned in the Order. On 18th November of the same year, General Alured Clarke, Lieutenant-Governor and Commander-in-Chief of the Province of Quebec, issued a Proclamation in His Majesty's name, in pursuance of his instructions, declaring when the division should take effect; the Act having provided that the division should take effect upon a Royal Proclamation being issued, setting forth a day for that purpose. December 26th, 1791, was the date named in the Proclamation. The description of the Province is given in the recital:

"Whereas we have thought fit by and with the advice of our Privy Council, by our Order in Council, dated in the month of August last, to order that our Province of Quebec should be divided into two distinct Provinces, to be called the Province of Upper Canada and the Province of Lower Canada, by separating the said two Provinces according to the following line of division, viz:—'To commence at a stone boundary on the north bank of the Lake St. Francis, at the Cove West of Pointe au Bodet, in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of north thirty-four degrees west to the western most angle of the said Seigneurie of New Longueuil; thence along the north-western boundary of the Seigneurie of Vaudreuil, running north twenty-five degrees east until it strikes the Ottawa River, to ascend the said river into the Lake Temiscanning, and from the head of the said lake by a line drawn due north until it strikes the boundary line of Hudson's Bay, including all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada.'"

What "territory westward and southward" of the described lines was "commonly called or known by the name of Canada?" I have collected in the Book of Documents a vast amount of evidence on that point, which I will not trouble the Arbitrators with at present. There is no doubt that Canada included the whole of the territory now claimed by Ontario. If I find that my friends dispute that the name had this extensive signification, I shall give references to all sorts of documents which show that Canada was as extensive as I state it to have been.

SIR EDWARD THORNTON—Are you able to show any acts of jurisdiction exercised by Canada in the disputed territory?

THE ATTORNEY-GENERAL—Yes; I shall come to that point directly, and shall show continued and repeated acts of jurisdiction by the Province in the territory west of the line that the Dominion now contends for.

Before the proclamation of General Clark, the Commission to Lord Dorchester who was to be Governor-General, had been issued. It bears date 12th September 1791, and recited the Commission April 22nd, 1786, to the same Governor-General (a Sir Guy Carleton), and the Order in Council of August, 1791, dividing "the said Province Quebec" into two separate Provinces, by a line therein specified: "the Province of Upper Canada to comprehend all such lands, territories and islands lying to the westward of the said line of division as were part of our said Province of Quebec." This form of expression shows that Quebec was supposed and intended to include all the territory belonging to England, and formerly known as Canada, for it is impossible to suppose that there was an intention so soon to give to the Province narrower bounds than were indicated by the paper presented to Parliament, adopted afterwards by the King in Council, and then were defined by the proclamation of Governor Clark. Some change was required by strict accuracy of expression. B

the treaty of 1763, France had ceded to England "Canada and all its dependencies," but with a limitation: the water-shed of the Mississippi and Missouri had been the boundary line between Canada and Louisiana, and by the treaty the part of Canada which was west of the Mississippi had been reserved to France; by the treaty of 1763, a further part of Canada had been ceded by England to the United States. A description, therefore, in 1791 of the Province of Quebec, or of Upper Canada, which would purport to give to the Province all "the country commonly called or known by the name of Canada" would not have been correct; and a form of expression was substituted which was free from this objection. There is not the slightest reason for thinking that there was any intention by the subsequent Commissions—in referring to the old Province of Quebec—to limit the territory which was provided for by the paper to which I have referred by the Order in Council, and by the Commissions first issued. Quebec was evidently understood on all hands as embracing so much of Canada as still belonged to Great Britain.

The subsequent Commissions to the Governors-General of Canada, up to and including that of Lord Gosford, in 1835, and the Imperial Commission to Mr. Caldwell as Receiver General of Lower Canada, assigned the same line of division between Upper and Lower Canada. I point this out in order to show that it was not an accident or a mistake which led to the line between Upper and Lower Canada being described as it was; it was evidently the deliberate purpose of the Crown to give that description. The Commissions commence with the one issued in 1791 to give that line—the very first Commission issued after the Act—and every Commission from that time to 1838 assigned the same boundaries. In seven Commissions, from that issued to the Earl of Durham, March 30th, 1838, to that to Lord Elgin, October 1st, 1846, and also in the two Commissions to Sir John Colborne and the Right Hon. Charles P. Thomson, as Captains-General and Governors-in-Chief of Upper Canada, dated respectively December 13th, 1838, and September 6th, 1839, the line of division between Upper and Lower Canada is stated to reach the "shore" of Hudson Bay: "by a line drawn due north from the head of said lake (Temiscaming) until it strike the shore of Hudson Bay." These seven Commissions use the word "shore." It is not to be supposed that there was a mistake in substituting the word "shore" for the words "boundary line." The two expressions "boundary line of Hudson Bay" and "shore of Hudson Bay" evidently meant the same thing.

After Lord Elgin's, the Commissions to the Governors-General did not contain any boundary line descriptions. The other Commissions to the Lieutenant-Governors of Upper Canada which have been examined, either do not give the boundaries of Upper Canada or give them partially only, and in such a manner as throws no light on the present question. So also the Commissions after the Union do not give the western boundary of the Province of Canada. The Commissions to Sir John Colborne and Governor Thomson trace the western boundary into Lake Superior, and no farther, saying nothing of the line thence either westerly or northerly.

I was asked just now by Sir Edward Thornton, whether acts of jurisdiction were ever exercised within the limits now claimed by the Dominion; and I propose now to answer this question. The first fact I may mention is, that Upper Canada has been in the habit of issuing writs into the territory west of the line 89 degrees 9½ minutes, since, at all events, 1818. We have been able to trace the practice back to that date. In 1850 the Province of Canada, with the sanction of the Imperial authorities, entered into a treaty with the Indians, and procured the surrender of the rights of the Indians in the territory as far west as Pigeon River or the international boundary. This territory, it may be observed, is south of the height of land, and includes the territory between the line 89° 9½' and the international boundary, this being territory which the Hudson Bay Company never claimed, although the Dominion claims it now. The treaty is set forth in pages 22 to 24, Book of Documents. Mr. Robinson, who negotiated the treaty, seems from the terms of it, to have been of the opinion that the height of land was our northern boundary, but, of course, his opinion does not bind us. Another way in which jurisdiction has been exercised is this:—From the year 1853 the Province of Canada, continuously, and without



objection from any quarter, made grants of lands in the Queen's name in this territory, west of the proposed line of the Dominion, and up to Pigeon River. Between 1853 and Confederation, no less a quantity than 35,059 acres had thus been granted west of that line. Numerous mining licenses in the same territory were granted in like manner, commencing with the year 1854, the territory embraced in them extending to Pigeon River. The dates and other particulars of all these grants are given in the Book of Documents, 322, 409. In 1868 the Government of the Dominion appropriated \$20,000 towards the construction of a road from the Lake of the Woods to Fort Garry, on Red River; the money was expended accordingly.

Sir Edward Thornton—I think that was the money expended in time of great distress, and which led the Hudson Bay Company to complain of intrusion on their territories.

The Attorney-General—And, on behalf of the Dominion, its Ministers Sir George E. Cartier and the Hon. William McDougall ably replied to the complaint, and showed that there was no ground for it. The correspondence will be found at page 323 of the Book of Documents.

So far as relates to Ontario's western boundary, it is unnecessary to consider the argument as to the Hudson Bay Company owning this territory; because the extension of the southerly boundary to the west is not made to depend on the Company's having or not having the territory to which the western extension of the southerly boundary would bring us, and the Crown had power to include within the limits of the Province part of the territory of the Company, as well as that of any private owner of land, if such was the royal will. But the fact that this western territory had been discovered, explored, traded with, occupied and taken possession of by the French before the treaty of cession—which seems now to be admitted on all hands—shows that the Company had no right to this territory and adds strength to Ontario's claim, even in respect to the western boundary.

The only thing that I know of against all this mass of evidence are the decisions of a Lower Canadian Court in 1818, in the cases of *De Reinhardt* and *MacLellan*, which have been cited in favor of the line drawn due north from the confluence of the Ohio and the Mississippi, and stated in the evidence in those cases to be 88°50' or 88°58'. In each of those cases the question was—whether the locality in which the murder was committed was in Upper Canada or not. The court was acting under a special statute and Commission, which confined its authority to offences committed outside of Upper Canada; the prisoners wished to make out that the scene of the alleged murder was in Upper Canada, and that the Court had therefore no jurisdiction. The court naturally leaned against what seemed a technical objection. The investigations and discussions of the last twenty-five years have thrown an immense amount of fresh light on the question; a good deal of the evidence on which I ask the Arbitrators to come to a different conclusion, was not before the court; the court seemed also impressed with the erroneous idea that the word “northward” in the Act of 1774 necessarily meant due north, and the argument for another construction from other words in the statute was not presented by counsel, whose contention rather conceded that the Act of 1774 was against them, and they endeavored to show that the Act of 1791 extended the boundaries; the court had before it the proclamation of General Alured Clarke, but not the paper which had been submitted to Parliament in 1791, nor the series of Commissions which had been issued, and which showed conclusively the intention of the Act and of the Crown; nor had the court its attention called, either to the historical facts referred to in the recital of the Quebec Act, or to the evidence of intention afforded by the debate on the Act and by Mr. Burke's letter. The court had nothing like the same materials for coming to a correct conclusion as the Arbitrators have; and, having reference to the materials before the Arbitrators, I submit it is quite clear that the conclusion of the court on the point now in question was wrong.

Chief Justice Harrison—Still it was an important decision.

Sir Edward Thornton—It was a unanimous decision.

Mr. MacMahon—The then Chief Justice said that he had consulted his brother judges, and they were unanimously of opinion that that was the conclusion which ought to be reached.

Chief Justice Harrison—De Reinhardt, although convicted, was never executed.

The Attorney General—No; he was not executed. I have endeavored to get the despatch which directed that he should be released, but it cannot be found. There is no doubt that the man was not hanged, and no reason has been suggested for this except that the British Government, acting under the advice of the Crown Lawyers in England, thought that the ruling of the court on the point in question here was not correct. (Documents, page 226.) McLellan was acquitted.

In view of the whole evidence now before the Arbitrators it is apparent that if there is any difficulty on the westerly side of the Province, it is only as respects the territory west of Lake of the Woods. Is our western line further west than this lake? Does it extend to the first tributary of the Mississippi, which a line due west from the most north-western point of the Lake of the Woods strikes? Or does our western limit extend to the Rocky Mountains?

I submit that the proper legal way of viewing the matter is, that inasmuch as the Royal Commissions declare that the line is to go due west to the Mississippi, some meaning must be given to that direction, and these words should be construed as referring to either the then supposed locality of the Mississippi, or the first stream the waters of which flow into the Mississippi, no matter by what name the stream may be called. There are various streams which fall into the Mississippi that a due west line would meet; these first fall into the Missouri and then into the Mississippi. We must find some meaning for the words employed; and as what is now called the Mississippi would not be touched by this due west line, we must find another meaning as near to the language used as possible.

I come now to consider the northern boundary, which, so far, I have only referred to incidentally. I have stated that the Quebec Act, and such of the Royal Commissions to the Governors, previous to 1791, as mention the northern boundary, specify for that purpose the southerly boundary of the territory granted to the Hudson Bay Company; and the principal difficulty here is, that the southerly boundary of this territory was never definitely ascertained.

The claim of the Dominion is that the northern boundary of the Province is the height of land already described. I submit that it is clear that the height of land is not our northern boundary, and, on the contrary, is considerably south of our northern boundary. The first fact showing this is, that the easterly and westerly lines assigned to the Province by the Royal Commissions cut through and go north of the height of land. This alone is conclusive on the point. The shore of Hudson Bay, to which our boundary goes on the east, is far north of the height of land; and the Lake of the Woods, through which our boundary passes on the west, is also north of the height of land, to which the claim of the Dominion would limit us. It may be said also that the Commission which was issued in 1791, and such of the subsequent Commissions as mentioned the northerly boundary, declared in effect that the southerly boundary of the Company's territory was not south of those two points, namely: the south shore of Hudson Bay (called there James Bay) and the most north-western point of the Lake of the Woods.

The next answer to which I ask the attention of the Arbitrators is, that so southerly a boundary as this height of land was not claimed or suggested by the Company as being within the intention of the charter, or as being the measure of the Company's just rights, until nearly a century and a half after the date of the charter. The Company's papers and books have been thoroughly examined, and I do not think my learned friends will be able to show that for a century and a half after the date of the charter the Company claimed the height of land as their boundary. The English Commissioners, in their negotiations with France, made, in the instance, a proposal something like that, but made it of their own motion, without any authority from the English Government, and without any suggestion from the Company. That proposal will be found printed in the Book of Documents, at



page 365, the last paragraph on that page. The language used is this: "The said Commissaries further demand that the subjects of His Most Christian Majesty shall not build forts or found settlements upon any of the rivers which empty into the Hudson Bay, under any pretext whatsoever; and that the stream and the entire navigation of the said rivers shall be left free to the Company of English Merchants trading into Hudson Bay, and to such Indians as shall wish to traffic with them." But even that proposal did not claim as the boundary the height of land; it claimed only that the rivers should be free, and that no forts should be built or settlements made upon them, because such would interfere with the freedom of the streams. The proposition had reference only to the rivers, not to the lands. There is no evidence that the land was in the minds of the Commissioners.

The point, however, which I am making is, that the Company themselves did not for one hundred and fifty years make that claim. They made their claim in different forms at different times. Upon the occasion of the Treaties of Ryswick, in 1697, and Utrecht, in 1713, the Company's claim was expressed either in the terms of the charter, or was simply to "the whole Bay and Straits of Hudson, and to the sole trade thereof." It sufficiently appears from the early documents which emanated from the Company, that this general claim to the whole Bay and Straits was a claim to the waters and shores only, and to the exclusion of the French therefrom,—the French having been in possession of forts on the Bay until after the Treaty of Utrecht, and the Treaty of Ryswick having in effect given them possession of all places on the Bay except, it may be, Fort Bourbon. The Company's object was the trade of the Bay, and not the occupation or settlement of the country away from the shores of the Bay. The line which the Company itself proposed in 1700 was from the River Albany, on the one side, to Rupert River, on the other side of the Bay; but the French rejected the proposal. In 1701 the Company proposed a still more northerly line, namely, from the River Albany, on the one side, to East Main River, on the other; but the French rejected that one also.

In 1711-12, the Company proposed a line to run from the Island of Grimington, or Cape Perdrix, on the Labrador coast, south-westerly to and through Lake Mistassin. This line did not extend beyond the south-west shore of the Lake; and though the Company made a demand for the surrender of the forts on the shores of the Bay, yet they do not appear to have made at that time any proposal as to a line on the west or south side of the Bay, and their only claims and contests of this period were about the margin of the Bay. In one instance or more they absurdly claimed the whole eastern coast to the Atlantic and the whole western coast to the Pacific; but the specific claim that they were entitled to the height of land, and to the territory along the various rivers which directly or indirectly flow into Hudson Bay, was not made for one hundred and fifty years after the charter had been obtained.

The ground on which the Company's (and now the Dominion's) claim to the height of land is maintained is, an alleged rule that the discovery and possession of the shore of a new country give a right to the rivers and to the land adjoining. I do not admit that so-called rule. It is stated more strongly than the authorities warrant. My learned friends have in their case referred to Dr. Twiss's book on the Oregon Territory. That book was written by Dr. Twiss as a controversialist. It was published during the discussions on the question of the Oregon Territory, and published to help the English cause. But the view which was taken by Great Britain as to the alleged rule, appears from an extract which my learned friends have printed at page 6 of the Dominion Case:—"Sir Francis Twiss, in his discussion on the Oregon question, at page 300, states that Great Britain never considered her 'right of occupancy up to the Rocky Mountains to rest upon the fact of her having established factories on the shores of the Bay of Hudson—that is to say, upon her title by mere settlement, but upon her title by discovery confirmed by settlements in which the French nation, her only civilized neighbor, acquiesced, and which they subsequently recognized by treaty.'" So that it is only to the extent of the actual recognition of the English settlement by the French, subsequently made, that Dr. Twiss was of opinion that the rule had proceeded. At page 148 of the same book

the author quotes Mr. Rush as asserting on behalf of the United States, "that a nation discovering a country, by entering the mouth of its principal river at the sea coast, must necessarily be allowed to claim and hold as great an extent of the interior country as was described by the course of such principal river, and its tributary streams." But Dr. Twiss remarks that "Great Britain formally entered her dissent to such a claim, denying that such a principle or usage had been ever recognized amongst the nations of Europe;" and that "in the subsequent discussions of 1826-27 Great Britain considered it equally due to herself and to other powers to renew her protest against the doctrine of the United States."

Suppose, however, the modern rule to be as the Dominion contends; we are now interpreting an old charter, and we cannot interpret it by a new rule. The object is to find out what the intention at the time was; and we are not for that purpose to make use of modern rules not known and acted on at the time the charter was granted. I do not find any ground whatever for holding that the rule, which my learned friends contend for, was a recognized rule at that time, if there is any reason for maintaining its subsequent adoption and recognition.

Again, all international rules are founded on reason and necessity; it is because they are supposed to be just that the rules are recognized. If, in some cases, it may be just and reasonable that the possession of the coast should give a title to all the land watered by the rivers, back to the height of land, this cannot apply to a river 3,000 miles long. So far from being a matter of necessity or reason, it is absurd that the possession of a few miles of coast on Hudson Bay should give the right to a river 3,000 miles long, and to half a continent of territory which that river happens to water. General rules respecting the rights of nations must be applied in a moderate and reasonable way, and not to cases to which the application cannot be defended on grounds of reason and justice. If such a rule exists as my learned friends contend for, there is no reason, justice or good sense in applying it to a case of this kind.

Further, possession, as well as discovery, is needed in order to give to a nation, the rights for which my learned friends contend. The facts are, that the French from the beginning of the seventeenth century, were in possession of the territory to the south of the lands watered by the rivers flowing into Hudson Bay, and were from time to time extending their explorations and settlements, as they had a right to do, to the head waters of the rivers flowing into Hudson Bay, and to the interior of the country. They had various forts and settlements in the interior, and these settlements were not objected to by the English, nor could they have been. Supposing the rule to have been what the Dominion contends that it was, the fact of the French being in possession of the territory to the south of the rivers, and extending their territory from time to time, would bar the discoverers of the Bay—if the Company were the discoverers—from saying that, by reason of the discovery, they could stop all further exploration in that direction. The rule, so far as it exists, is of effect only where the interior of the country can be reached only through the coast discovered and settled.

The case of the Dominion is based on the assertion that the English were the first discoverers of the Bay, but it is impossible to say with certainty who were the first discoverers, nor was the alleged discovery by the English followed by possession. The voyage of Cabot, "grand pilot to Henry VII" (of England), into the Bay, is said to have taken place in 1517; but no sort of possession of any part of the Bay by the English before 1667 is pretended, being an interval of 150 years. It would be extraordinary to find a rule by which, after discovery being made, and 150 years or more allowed to go by, the advantage of that discovery can then be claimed as giving title to half a continent. Gillam, a British subject, is said to have built, in 1667, Fort Charles (Rupert), which was on the east side of the Bay; but in the meantime the Bay had become known to the world. In the list of maps at page 135 of the Book of Documents, will be found a number of maps of dates antecedent to the charter, and showing the Bay. The country was well known to everybody when Gillam built his fort.



It is not material under the circumstances, but it is reasonably clear, as a fact, that the Bay was repeatedly visited by Frenchmen from the French settlements on the St. Lawrence between 1656 and 1663. I refer the Arbitrators to page 108 of the Book of Documents, the memoirs of *Sieur de Callières* to the Marquis de Seignelay, the Foreign Minister of France. My learned friends dispute the truth of the statement in the memoir of *Sieur de Callières*, that Father Dablon and *Sieur Couture* visited Hudson Bay in 1661 and 1663, *M. de Callières* is spoken of as a man of high character, and this memoir was not written for the purpose of controversy, but was a confidential communication to the Minister in France, who was the official superior of the writer. *M. de Callières* was Governor of Montreal and afterwards of Canada. I apprehend it will be assumed at this late day that his statements were correct. He says:—

“As regards Hudson Bay, the French settled there in 1656, by virtue of an *arrêt* of the Sovereign Council of Quebec, authorizing *Sieur Bourdon*, its Attorney-General, to make the discovery thereof, who went north to the said Bay and took possession thereof in His Majesty's name. In 1661, Father Dablon, a Jesuit, was ordered by *Sieur d'Argenson*, at the time Governor of Canada, to proceed to said country. He went thither, accordingly, and the Indians, who then came from thence to Quebec, declared they had never seen any European there. In 1663, *Sieur d'Avangour*, Governor of Canada, sent *Sieur Couture*, Seneschal of the Côte de Beaupre, to the north of the said Hudson Bay, in company with a number of the Indians of that country, with whom he went to take possession thereof, and he set up the King's Arms there. In the same year, 1663, *Sieur Duquet*, King's Attorney to the *Prévôté* of Quebec, and Jean l'Anglois, a Canadian colonist, went thither again by order of the said *Sieur d'Argenson*, and renewed the act of taking possession by setting up His Majesty's Arms there a second time. This is proved by the *arrêt* of the said Sovereign Council of Quebec, and by the orders in writing of said *Sieurs d'Argenson* and *d'Avangour*.” There is a detailed account of which the Governor of the Province is sending a confidential communication.

I refer also to the statements of *M. de Denonville*, Governor-General of Canada, to the Foreign Minister. They will be found at page 111 of the Book of Documents. *M. de Denonville* says:—“On the 29th of April, 1627, a new (company) was organized, to which the King (Louis XIII) conceded the entire country of New France, called Canada, in latitude from Florida, which His Majesty's Royal predecessors had had settled, keeping along the sea coasts as far as the Arctic Circle, and in longitude from the Island of Newfoundland westward to the great lake called the Fresh Sea, and beyond, both along the coasts and into the interior. Since that time, the French have continued their commerce within the countries of the said grant. In 1656, Jean Bourdon ran along the entire coast of Labrador with a vessel of thirty tons, entered and took possession of the North Bay. This is proved by an extract of the ancient register of the Council of New France of the 26th of August of the said year. In 1661, the Indians of the said North Bay came expressly to Quebec to confirm the good understanding that existed with the French, and to ask for a missionary. Father Dablon went overland thither with *Sieur de LaValière* and others. Father Dablon has given his certificate of the fact. In 1663 those Indians returned to Quebec to demand other Frenchmen. *Sieur d'Avangour*, then Governor, sent *Sieur Couture* thither with five others. Said *Sieur Couture* took possession anew of the head (fonds) of said Bay, whither he went overland, and there set up the King's Arms engraved on copper. This is proved by *Sieur d'Avangour's* order of May 20th, 1663, and the certificates of those who were sent there.” These also are statements made confidentially by a man of high character, who ought to know, to his official superior in France.

I find the following on this subject at page 3 of the Dominion Case:—“It appears that in the year 1656 there was an order of the Sovereign Council of Quebec authorizing *Sieur Bourdon*, its Attorney-General, to make a discovery thereof. There is no record whatever of his having attempted to make the discovery in the same year in which the order was passed by the Council. There is a record, however, of

his having made the attempt in the year following (1657), and he may then have designed carrying out the order. He sailed on the 2nd day of May, and returned on 11th August, 1657; and it is not pretended that he could have made a voyage to Hudson Bay and return between these dates. (*Journal des Jesuites*, pp. 209 218). Of course he could not; but then a man may make voyages in different years. It is not to be assumed that he did not make a voyage the year before because he made a partial voyage in this year, since we have positive testimony that he had also made that previous voyage. If these Governors were making false statements to their superiors in France, they would have referred to 1657; but they referred to 1656, showing that the reference was to a different transaction altogether. It is true there is no entry in the Jesuits' book of this voyage of 1656, but that book is silent in regard to many things which no doubt did occur; and the mere fact of its not mentioning a voyage is no sort of evidence that the voyage did not take place. The printed case for the Dominion comments also on what is said in reference to Father Dablon. It does not appear whether there were two priests of that name or only one. At all events, the mere fact that the journeys which we prove to have been made by a priest of that name were not recorded by the Jesuits is no evidence against the direct authority that we have for the fact. On the whole, there seems to be no reason which would justify us in now doubting that persons acting under the authority of the French Government had repeatedly visited Hudson Bay in and before 1663, had taken possession in the French King's name, and set up the Royal Arms there.

And, however that may be, the French had certainly before that date established posts at convenient points for trade with the Indians, and had secured the whole trade with the Indians around the Bay. In 1627, long before the date of the Hudson Bay charter, the King of France gave to the Company of New France the right of trade to an extensive territory—including Hudson Bay—both along the coasts and into the interior; those words being inserted in the charter. The French were enjoying the whole trade with the Indians around the Bay at the time the charter to the Hudson Bay Company was given. It is said in the books that for the purpose of giving property in a country, the possession needed is a possession having relation to the nature of the country. This was not an agricultural country; settlement for the purpose of agriculture was not expected; all that either party wanted was the trade with the Indians; the French had secured that, and had been in the enjoyment of it long before the Hudson Bay Company obtained their charter, and this was sufficient to prevent their rights from being interfered with by the subsequent possession of the coast by the English, after they had allowed one hundred and fifty years to pass without acting on the discovery which they are said to have made.

In the Dominion case, stress is laid on the fact that, by the Treaty of Utrecht (1713) the whole Bay and Straits were ceded or restored to England by France. But it was never intended by either party that so extensive a claim as is now made should be made under any language employed in that treaty. In the memorial concerted with the Marquis de Torcy, January 19th, 1713, and forwarded to Lord Bolingbroke by the Duke of Shrewsbury (*Book of Documents*, p. 153), it is stated:—"The inhabitants of Hudson Bay, subjects of the Queen of Great Britain, who have been dispossessed of their lands by France, in time of peace, shall be entirely and immediately after the ratification of the treaty, restored to the possession of their said lands; and such proprietors shall also have a just and reasonable satisfaction for the losses they have suffered, with respect to their goods, movables and effects; which losses shall be settled by the judgment of Commissaries, to be named for this purpose, and sworn to do justice to the parties interested." And Mr. Prior writes to Lord Bolingbroke on January 8th of the same year (*Book of Documents*, p. 153):—"As to the limits of Hudson Bay, and what the Ministry here seem to apprehend, at least in virtue of the general expression, *tout ce que l'Angleterre a jamais possédé de ce côté là*, (which they assert to be wholly new, and which I think is really so, since our plenipotentiaries make no mention of it), may give us occasion to encroach at any time upon their dominions in Canada, I have answered, that since, according to



the *carte* which came from our plenipotentiaries, marked with the extent of what was thought our dominion, and returned by the French with what they judged the extent of theirs, there was no very great difference, and that the parties who determine that difference must be guided by the same *carte*, I thought the article would admit no dispute. In case it be either determined immediately by the plenipotentiaries or referred to Commissioners, I take leave to add to your Lordship that these limitations are not otherwise advantageous or prejudicial to Great Britain than as we are better or worse with the native Indians, and that the whole is a matter rather of industry than dominion. If there be any real difference between *restitution* and *cession*, *queritur?*"

It is plain, therefore, that the treaty was not intended to authorize so large a claim by England against France as the Dominion case contends. We know pretty well what, for the sake of peace, the French were willing to give up—namely, the territory to one or the other of the lines marked on DeLisle's maps, and marked as such on our map—and what I have just read shows that there was not a great difference between what England demanded and what France was willing to give; and it is manifest that would not have been the case if there was anything like what is now demanded.

The testimony, therefore, appears to be abundant that the height of land boundary was what the English had no right to claim. Assuming that to be so, the question is—What line north of the height of land is to be regarded as the Company's southern boundary?

The language of the charter, by reason of its ambiguity, affords no assistance in this inquiry. The validity of the charter has always been questioned on the ground of its ambiguity, as well as for other reasons. Assuming that the northern boundary is on one side the shore of Hudson Bay, say between  $51^{\circ}$  and  $52^{\circ}$  of latitude, and on the other, at least as far north as the most north-western point of the Lake of the Woods, say latitude  $49^{\circ} 23' 55''$ ; if these points were clearly in the Hudson Bay territory, the northern boundary would perhaps be a line drawn from one of these points to the other. We claim that our boundary is farther north than this, but cannot be south of it. Are these points in what was the territory of the Company? And is the Provincial boundary no farther north? If by reason of the charter being so old, and having been acted upon in some sort, and of its validity to some extent being implied in certain statutory references to the Company, the instrument cannot be treated as absolutely void, it must, as regards its construction and operation, on well-known and well-settled principles, be interpreted most strongly against the Company and in favor of the Crown. The object of giving the charter, as the charter itself declares, was to encourage discoveries by the Company; and the validity or operation of the instrument is to the extent only of giving (so far as the Crown could give) to the Company whatever of unknown territory the Company, within a moderate and reasonable time, should occupy; and all that the Company could be entitled to was what the Company had, in this manner, acquired for themselves and for the Crown previous to the cession of Canada in 1763 by France to England; or what previous to that time, the Company had been in possession or enjoyment of as their own with the concurrence of the Crown.

It is a familiar rule that Crown Grants are construed most favorably to the Crown the grantor. The rule is thus stated in Chitty on Prerog., page 391: "In ordinary cases between subject and subject, the principle is that the grant shall be construed if the meaning be doubtful, most strongly against the grantor, who is presumed to use the most cautious words for his own advantage and security. But in the case of the King, whose grants chiefly flow from his royal bounty and grace, the rule is otherwise; and Crown grants have at all times been construed most favorably for the King where a fair doubt exists as to the real meaning of the instrument, as well in the instance of grants from His Majesty as in the case of transfers to him." The rule is not new, but was in existence at the time of this charter and before, and was, perhaps, more stringently acted upon then than it is in the case of modern deeds. Independently of this consideration, legal opinions are uniform, that, in the

case of an old and ambiguous charter like this, the instrument operates as far as possession and enjoyment have been had under it, and no further. I may cite some decided cases bearing on this point. *Blankley vs. Winstanly*, 3 Term Reports, 288, is one of them. In that case it was observed by one of the learned Judges, as follows:—"With regard to the usage: usage consistent with the meaning of the charter has prevailed for 190 years past, and if the words of the charter were more disputable than they are, I think that ought to govern this case. There are cases in which this court has held that a settled usage would go a great way to control the words of a charter. Such was the case of *Gape vs. Handley*, in which the court went much further than is necessary in the present case; and it is for the sake of quieting corporations that this court has always upheld long usage where it was possible, though recent usage would not perhaps have much weight." So in *Wadley vs. Bayliss*, 5 Taunt, 753, the case of an award under the Inclosure Acts, it was laid down that "the language of the award being ambiguous, it was competent to go into evidence of the enjoyment had, in order to see what was the meaning of those who worded it."

The rule is thus applied by Sir Arthur Pigott, Mr. Spankee and Mr. Brougham, in the opinion printed at p. 193 of the Book of Documents:—"In such a long track of time as nearly one hundred and fifty years, now elapsed, since the grant of the charter, it must now be, and must indeed long since have been, fully ascertained by the actual occupation of the Hudson Bay Company, what portion or portions of lands and territories in the vicinity, and on the coasts and confines of the waters mentioned and described as within the Straits, they have found necessary for their purposes, and for forts, factories, towns, villages, settlements or such other establishments in such vicinity, and on such coasts and confines as pertain and belong to a Company instituted for the purposes mentioned in their charter; and necessary, useful, or convenient to them within the prescribed limits for the prosecution of those purposes."

In 1357 the Crown lawyers pointed out (page 202) that the question of the validity and construction of the Company's charter cannot be considered apart from the enjoyment that had been had under it. "Nothing could be more unjust than to treat this charter as a thing of yesterday, and upon principles, which might be deemed applicable to it if it had been granted within the last ten or twenty years." They likewise say:—"The remaining subject for consideration is the question of the geographical extent of the territory granted by the charter, and whether its boundaries can in any and what manner be ascertained. In the case of grants of considerable age, such as this charter, where the words, as is often the case, are indefinite or ambiguous, the rule is, that they are construed by usage and enjoyment." There is no authority or opinion against that.

Again, the Company were certainly not entitled to any of the territory which France owned at the time of the cession, and ceded to England; it is preposterous to suppose that the charter intended to grant, and did effectually grant to the Company, as against the world, all the territory southerly and westerly of the Bay to the then unknown height of land (unknown to the Crown and to the Company), though such territory should be, as it was, to the extent of unknown hundreds of thousands of square miles—a third of the continent; that the charter was intended to give, and did give, to the Company, the right to shut up this enormous territory from the Crown and from all British subjects—and from other nations also—for all time; that if the Company should do nothing to discover, settle or acquire it for a hundred years or more, nobody else could, and that any portion of it which England should, a hundred years afterwards, acquire by war with another nation, and by the employment of the resources of the whole Empire, in Europe as well as America—accrued when so acquired and was intended to accrue, to the Company, for their own private benefit. Such a claim cannot be in accordance with a sound interpretation of any authorities which can be found.

It is clear, and, indeed, has been repeatedly admitted by the Company themselves, that until long after the date of the cession, the Company had no possession of



any part of the interior of the country, and that their possession was confined to certain forts on the Bay and two factories not very distant. Henley House was one of these factories, on the Albany, erected in 1744; and France had, at the same time, forts on the same river. At all events, with these exceptions, no possession of any part of the territory away from the shore was had by the Company until long after the cession.

I have said that the Company have admitted that to be so. A Committee of the British House of Commons was appointed in 1749 to inquire into the state and condition of the countries adjoining Hudson Bay, and of the trade carried on there; and evidence was given before this Committee that at that time the only forts and settlements of the Company were on the Bay. (Book of Documents, 3:5.) Those opposed to the Company at that time were complaining of this, and urging that the Company had not attempted to settle the country.

Again in a statement of the Hudson Bay Company, the material part of which is printed in the Book of Documents, page 402, there is this admission: "As long as Canada was held by the French, the opposition of wandering traders (*Coueurs des Bois*) was insufficient to induce the Company to give up their usual method of trading. Their servants waited at the forts built on the coasts of the Bay, and there bought by barter the furs which the Indians brought from the interior. But after the cession of Canada to Great Britain, in 1763, British traders, following in the track of the French, penetrated into the countries lying to the north-west of the Company's territories, and by their building factories, brought the market for furs nearer to the Indian seller." That means British traders unconnected with the Company. "The Company, finding their trade seriously affected, extended the field of their operations, and sent parties to establish themselves in the interior." I need for my purpose nothing more than this statement by the Company themselves. It is an express admission that the French did settle in the territories referred to, that the Hudson Bay Company confined themselves to the forts on the Bay, and that after the Treaty of 1763, British traders unconnected with the Company commenced to move; that they were first to move; and that it was not until the Company found their trade seriously affected by the acts of these other traders that the Company extended their operations.

Then at page 412, Book of Documents, there is a letter from Mr. Goschen, then Chairman of the Company, telling the result of his researches into the books and papers of the Company. Amongst other things, he says: "At the time of the passing of the Quebec Act, 1774, the Company had not extended their posts and operations far from the shores of Hudson Bay. Journals of the following trading stations have been preserved bearing that date, namely, Albany, Henley, Moose, East Main, York, Severn and Churchill." The Solicitors employed by the Dominion to search the records of the Hudson Bay Company, wrote as follows (see page 414, Book of Documents):—"From a perusal of the Company's Journals, we find "that it was not the practice of the Company's servants to go up country to purchase peltry from the Indians; but the Indians came down to York and other forts on the Bay and there exchanged their furs, etc., for the Company's merchandise." So that the Company not only did not establish stations, but did not go up the country. "It appears that the peddlers (French traders—*Coueurs des Bois*, as they were called), from Quebec, had, for some time prior to the year 1873, gone up into the Red River district, and by so doing had cut off the Indians and bought their furs." Sir John Rose says (his statement is at page 414 of the same book): "I may mention that I do not think that any further research would have thrown more light on the matter than the Ontario Government is already in possession of. I employed a gentleman for several weeks to search at the Colonial Office and Foreign Office, as well as the Rolls' Office and the Hudson Bay Archives, and every scrap of information bearing on it was, I think, sent out either to Mr. Campbell or to Mr. Scott [Dominion Ministers] some months ago. I believe that any further search would be attended with no result." Thus, during the whole period, from 1610 to the passing of the Quebec Act, the Hudson Bay Company had been in no sort of possession of more than their forts and factories on and in the immediate neighborhood of the Bay.

The Dominion Ministers truly affirmed, in 1869, that "the evidence is abundant and conclusive to prove that the French traded over and possessed the whole of the country known as the Winnipeg Basin and 'Fertile Belt,' from its discovery by Europeans down to the Treaty of Paris, and that the Hudson Bay Company neither traded nor established posts to the south or west of Lake Winnipeg, until many years after the cession of Canada to England." The Company's first post—viz., Cumberland House, on Sturgeon Lake—in the vicinity of the region in question, was not built until 1774, and they did not establish any post within this tract of country before 1790.

There has been printed in the Book of Documents, 230, the judgment of the Hon. Mr. Justice Monk, of Lower Canada, in a case of *Connolly vs. Woolrich*, and the substance of it is this:—he shows, in regard to the French, that as early as 1605, Quebec had been established and had become an important settlement; that before 1630 the Beaver and several other companies had been organized at Quebec for carrying on the fur trade in the west, near and around the great lakes and in the North-West Territory; that the enterprise and trading operations of these French companies, and of the French colonists generally, extended over vast regions of the northern and north-western portions of the continent; that they entered into treaties with the Indian tribes and nations, and carried on a lucrative and extensive fur trade with the natives; that in the prosecution of their trade and other enterprises these adventurers evinced great energy, courage and perseverance; that they had extended their hunting and trading operations to the Athabasca country (say 58° north latitude and 111° west longitude); that some portions of the Athabasca country had before 1640 been visited and traded in, and to some extent occupied, by the French traders in Canada and their Beaver Company (which had been founded in 1629); that from 1640 to 1670 these discoveries and trading settlements had considerably increased in number and importance; that Athabasca and other regions bordering upon it, belonged to the Crown of France at that time, to the same extent, and by the same means, as the country around Hudson Bay belonged to England, viz., by discovery, and by trading and hunting. Judge Monk mentions 1670 because it was the date of the charter of the Hudson Bay Company. These were the conclusions to which Judge Monk came judicially.

It may be added, that, if the Athabasca country belonged to France at so early a period, so would the whole intermediate country between Athabasca and Hudson Bay on the east, and between the Athabasca country and the St. Lawrence on the south, because with these parts the French were more familiar, and traded to a much larger extent, than further north. Between 1670 (the last date named by Judge Monk) and 1763, the French established posts or forts in that North-West Territory which they had previously explored, and hunted over, and traded with, namely, on Rainy Lake, the Lake of the Woods, Lake Winnipeg, Lake Manitoba, on the Winnipeg River, the Red River, the Assiniboine River, the River au Biches, and the Saskatchewan, and so west to the Rocky Mountains, where Fort la Jonquière was established by St. Pierre in 1752. All these lakes and rivers are connected by the Nelson River with Hudson Bay, and are in the territory which, in the following century, the Hudson Bay Company claimed under their charter; but confessedly they had constructed in no post or settlement of any kind until long after 1763.

The subjects of France had also, on the northerly side of the dividing line, Fort Pembittibi, which was north of the height of land, and was built in 1686. It was situated at a considerable distance north of the height of land, and upon the lake of the same name, from which the River Mississippi flows into Hudson Bay. The French had also Fort St. Germain, on the Albany, which was built in 1684; and still higher up on the same river, Fort La Maune, established about the same period; and, to the west, Fort Nemiscau, on the lake of that name, situate on the River Rupert, midway between Lake Mistassin and the Bay; this fort was built before 1695. Of none of these did the English Government or the Company ever complain. The French had also another Fort on the Albany, being that mentioned in one of the memorials to the Company as having been built in 1715. The facts enumerated form another



conclusive ground against such a claim as is now set up by the Dominion as purchasers from the Company.

The matter is made clear in another way; that is, by the maps which the Company has furnished for the purposes of the present arbitration. We applied to them for what maps they had, and they furnished seven, only two of which seem to be of importance. One of the two, dated 1748, bears the Royal Arms and the Arms of the Company, and seems to have been prepared by the Company in view of the Parliamentary inquiry of that period, and for the purpose of showing the limits which the Company then claimed. The line which this map gives as the Company's southern boundary is considerably north of the height of land, even as shown on this map; for the line is therein made to cut Frenchman's River, and several other rivers shown on the map as flowing in Hudson Bay. The Company does not, by the map, claim to the height of land, even so far as these comparatively small rivers are concerned. Their southerly line on the map runs to the eastern shore of a lake called Nimigon, thence to and northerly along the easterly shore of Winnipeg, and thence northerly to Sir Thomas Smith's Sound, in Baffin's Bay. I am entitled to say that this map demonstrates that the Company, in 1748, did not claim to the height of land even as the height of land was then supposed to be situated, and did not claim Lake Winnipeg.

The other of the two maps is Mitchell's engraved map, described as published by the author, February, 1755. This copy appears to have been much used and worn; I suppose, therefore, that it is the map to which the Company chiefly referred to when they had occasion to examine any map of their territory. There is on it an irregular line marked "bounds of Hudson Bay by the Treaty of Utrecht," and the coloring on the two sides of that line is different. This line may therefore be taken as showing the extent of the Company's claim in 1755 and long after. Can there be any doubt that this is a fair conclusion to draw? On what principle can it be said that this map, which has been in the possession of the Company for over a century, should not be taken as showing, not what the bounds were, but what the Company regarded as their bounds? The line is about one-third of a degree north of the Lake of the Woods, and extends to the limit of the map in that direction, being in about the 98th degree of longitude.

Chief Justice Harrison—The height of land does not appear to have been known at the time the first of these two maps was prepared.

The Attorney-General—But these rivers are marked on the map, and the territory marked as the Company's does not extend to the sources of them.

Chief Justice Harrison—Those rivers are undoubtedly to the north of the height of land.

The Attorney-General—In regard to the territory which the Company knew when these maps were prepared, they did not claim to the height of land. On this map of Mitchell's the Company claimed a more southerly boundary than in the other map, but even in this map the line they claimed cut some rivers which flow into Hudson Bay, instead of extending to their sources. The claim to go to the sources of the rivers is inconsistent with both maps, although the Company claimed larger bounds by the one than by the other. The Lake of the Woods is marked, and the line the claim by the map is north of the Lake of the Woods.

Chief Justice Harrison—There does not appear to be an interval of more than seven years between these two maps. The height of land is marked in some places upon Mitchell's map.

The Attorney-General—Yes; but the map throughout negatives the idea that the Company then claimed to the height of land. After the Treaty of Utrecht (1713), which gave to the British, all lands, etc., "on the Bay and Straits, and which belong thereto," the Company, on the 4th August, 1714, proposed for the first time, that the Mistassin line should go as far south-westerly to 49° "north latitude \* \* \* and that that latitude be the limit;" as to how far to the west this line of 49° was to be followed nothing was then said. In 1719 and 1750 the Company proposed the line 49° generally, but both times the proposition was rejected by the French. T

line would have given to the Company a boundary greatly more limited than the boundary of the height of land, which began to be claimed nearly three-quarters of a century later.

It has already been said that the Company could not take advantage of their charter for the purpose of making any addition to their territory by exploration or settlement after the cession of 1763. The practical result would be nearly the same if this right should have been deemed to have ceased at a somewhat later date, viz. : the date of the passing of the Quebec Act, 1774, or even the date of the Treaty of 1783, for the Company made no further settlement between 1763 and 1783, except Cumberland House; and it is doubtful whether its locality belongs to the Winnipeg or the Churchill System. Both the Act of 1774 and the Treaty of 1783 obviously require that the Company's southern boundary should be deemed a fixed line, not liable to extension by the mere act of the Company.

These considerations are submitted as showing that the legal rights of the Company did not extend beyond their forts on the shore or in the neighborhood of Hudson Bay, and such adjacent territory as these forts, may under the circumstances, have given them a right to; and that Ontario is entitled to have its northern boundary line drawn accordingly.

If the evidence fails to satisfy the Arbitrators of the right of Ontario to this extent of territory, I refer them to the possible alternative lines mentioned at page 423 and following pages of the Book of Documents; and I will not detain the Arbitrators now by the statement and discussion of these other lines.

If there should seem to the Arbitrators to be too much doubt on the subject to enable them to determine with absolute precision the northern boundary of the Province, a boundary should be assigned which would give to the Province the full territory which the Commissions to the Governors definitely provided for, and such further territory to the north as may be just and reasonable in view of the whole case.

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#### 8.—THOMAS HODGINS, Q.C.—ARGUMENT BEFORE THE ARBITRATORS.

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Mr. Thomas Hodgins, Q.C., for the Province of Ontario, next addressed the Arbitrators. He said: In the printed documents submitted by the Government of Ontario, three territories are mentioned, the localities and limits of which must in some measure be ascertained in order to arrive at a proper solution of the question where the boundaries of Ontario should be traced. These territories are,—(1) the Indian Territories; (2) the Territories claimed by the Hudson Bay Company, and (3) the Territories known as Canada or New France.

The Indian Territories may be shortly described as those extensive tracts of land lying to the westward and northward of Canada and the Hudson Bay Company's Territory, not actually taken possession of by any civilized government prior to 1763. These Indian Territories are, as we contend, the lands described by Sir Alexander Mackenzie in his "Travels in North America," published during the early part of the present century, and appear on the map as the Arthabaskan and Chippewyan Territories. These territories were specially reserved under the sovereignty of the Crown for the use of the Indians, by the King's Proclamation of the 7th October, 1763, which established the Provinces of Quebec, East and West Florida and Grenada, "within the countries and islands ceded to the Crown" by the Treaty of Paris, of the 10th February, 1763. That Proclamation describes them as "the lands lying to the westward of the sources of the rivers which fall into the sea from the west and northwest," and as "such parts of our dominions and territories as, not having been ceded to us, are reserved to the Indians, or of them any, as their hunting grounds;" and again, as "lands which not having been ceded to or purchased by us, are still reserved to the said Indians as aforesaid." (a) They are also

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(a) Book of Documents, p. 26



described in the first section of the Act of 1803, which extended the jurisdiction of the Courts of Lower and Upper Canada over crimes and offences committed within certain parts of North America, in the following words:—"Indian Territories or other parts of America, not within the limits of the Provinces of Lower or Upper Canada, or either of them, or of the jurisdiction of the Courts established in those Provinces, or within the limits of any civil government of the United States of America."(a). No more clearly defined locality is given to these territories in any of the State Papers relating to North America; but Lord Selkirk, in his *Sketch of the British Fur Trade in North America*, published in 1816, refers to them thus:—"This vague term, 'Indian Territories,' has been used without any definition to point out the particular territories to which the Act is meant to apply." "There are, however, extensive tracts of country to which the provisions of the Act unquestionably do apply, viz:—those which lie to the north and west of the Hudson Bay Territories, and which are known in Canada by the general name of 'Arthabasca.' It was here that the violences which gave occasion to the Act were committed; and these are the only districts in which a total defect of jurisdiction described in the preamble of the Act was to be found."(b).

The other territories are those which, prior to the cession of Canada, in 1763, formed the possessions of the King of England, and are claimed as the "Hudson Bay Company's Territory," and the possessions of the King of France, known as "Canada or New France." That portion of this latter territory lying west of the Ottawa and Lake Temiscaming, and of "a line drawn due north to the boundary line" or "shore" "of Hudson Bay"—excepting the portion south of the great lakes, and west of the Mississippi, ceded to the United States in 1783—now forms the territory of the Province of Ontario. The diplomatic correspondence and State Papers, printed in the Book of Documents, show that for a series of years, prior to 1763, the territory about the shores of Hudson Bay was a chronic subject of dispute, of diplomatic negotiation, and of treaties, between the English and French Governments. From 1668 to 1755, the chief subject of discussion between the French Ministers and their Governors in Canada, and the English Ministers and the French Plenipotentiaries, was—what were the territorial limits or boundaries of the two Sovereigns about Hudson Bay.

Taking first the question—to which Sovereign the southern limits of Hudson Bay belonged, it will be found that after the Treaty of Utrecht, in 1713, the English Ministers asserted, that the whole of Hudson Bay, including, of course, the southern shore inland to line 49, belonged to Great Britain. On the other hand, the representatives of the Crown of France contended that their earlier discoveries, their prior possession, and their settlements had made that southern shore part of the territory of Canada. Certainly up to 1700, the Hudson Bay Company conceded to the French the sovereignty of the southern portion of James' Bay, south of the Albany River, on the west—or line 53° north latitude.(c). But subsequently, a gradual advance was made in the territorial claims of the Hudson Bay Company, as follows: To the Canute or Hudson River in 52° north latitude (d); to Lake Miskosinke, or Mistoveny, in 51½° north latitude (e); although no new possessory rights were acquired by Great Britain or the Company in the disputed territory, between 1700 and 1713.

After the Treaty of Utrecht of 1713, the claim presented by the Company to the English Government advanced the boundary to line 49° north latitude.(f). The Treaty restored—not surrendered—to England "the Bay and Straits of Hudson together with all lands, seas, sea coasts, rivers and places situate in the said Bay and Straits which belong thereto," all of which, with the fortresses there erected "either before or since the French seized the same," were to be given up within six months from the ratification of the Treaty. It further provided that the continuous limits of the territories of the two nations at Hudson Bay should

(a) Book of Documents, page 5. (b) Earl Selkirk, *Sketch of the Fur Trade*, pp. 85-6.

(c) Book of Documents, page 123. (d) *Ibid*, page 124. (e) *Ibid*, page 129. (f) *Ibid*, page 130.

be determined within a year by Commissioners to be named by each Government; so as to fix "the limits between the said Bay of Hudson and the places appertaining to the French—which limits both the British and French subjects shall be wholly forbidden to pass over or thereby to go to each other by sea or land." This Treaty, notwithstanding the exclusion, gave to the French a right to use the shores of the Bay, whatever meaning may be attached to the following words: "It is, however, provided that it may be entirely free for the Company of Quebec, and all other the subjects of the Most Christian King whatsoever, to go by land, or by sea, whithersoever they please, out of the lands of the said Bay, together with all their goods, merchandises, arms, and effects of what nature or condition soever," except munitions of war. (a) The Commissioners were appointed, but never determined the question of boundary. The British Commissioners, inspired by the Hudson Bay Company, claimed for the first time as the boundary, the line 49° north latitude. (b) This the Commissioners of the French King resisted, contending that the territory claimed was part of Canada.

Now, at that time, the Hudson Bay Company had not any territorial occupation beyond a few small posts or a widely scattered fringe of settlements, about three or four, on the shores of the Bay, and from which their trade with the Indians was carried on. This fact appears in the evidence taken by a Committee of the House of Commons in 1749. Historically, the same fact is stated by writers and officers of the Company who dealt with the question from personal knowledge. In Robson's *Account of Hudson Bay*, published in 1753, it is stated:—"The Company have, for sixty years, slept at the edge of a frozen sea. They have shown no curiosity to penetrate further themselves, and have exerted all their art and power to crush the spirit in others." (p. 6.) Further on, in speaking of the Indians, he shows how the French had gone inland, and had—unmolested by the Company—established forts and trading settlements with the Indians, and which, according to the acknowledged rules of international law, had given the French King proprietary and sovereign rights over the territory thus occupied by his subjects. "The French," he says, "live and trade with the Indians within the country at the heads of the rivers that run down to the English factories." "In consequence of this narrow spirit of self-interest in the Company, the French have been encouraged to travel many hundred miles overland from Canada, and up many rivers that have great waterfalls, in order to make trading settlements; and there they carry on a friendly intercourse with the natives at the head of most of the rivers westward of the Bay, even as far as the Churchill River, and intercept the Company's trade." "There are fine improvable lands up the rivers of the Bay, and no British settlements or colonies are made or attempted to be made there." p. 7.

Bowen's *Geography* published in 1747, says:—"The bottom of the Bay is by the French pretended to be part of New France; and indeed, to cross the country from St. Margaret's River (meaning the St. Maurice or the Saguenay) which runs into the river of Canada or St. Lawrence, to Rupert's River, at the bottom of Hudson Bay, is not above 150 miles. The French have a house or settlement for trade near the southern branch of Moose River, about 100 miles above the factory, where they sell their goods cheaper than the Company do: although it be very difficult and expensive to carry them so far from Canada. . . . The French get all the choice skins, and leave only the refuse for the Company. The French have also got another house (Fort Nemiskau) pretty high up, upon Rupert's River, by which they have gained all the trade upon the East Main, except a little the Company get at Slude River, the mouth of which is about thirty leagues to the north of Rupert's River." And further on, referring to the absence of English trade with the interior, the writer says that "The English who trade here have no plantations or settlements within land, but live near the coast within their forts, in little houses or huts." (c) Governor Pownall, in his report on the French posts in North America, states that by their influence with the Indians, the French had been admitted to a landed possession and

(a) Book of Documents, page 16. (b) Ibid, page 132. (c) Ibid, page 371.



had become possessed of a real interest in and a real command over the country. (a) The French Government, prior to the Treaty of Utrecht, claimed the whole of that territory; and after the Treaty, they continued to claim it as part of "Canada." They contended:—"The term 'restitution,' which has been used in the Treaty, conveys the idea clearly that the English can claim only what they have possessed; and as they never had but a few establishments on the sea coast, it is evident that the interior of the country is considered as belonging to France." (b) The French King, Louis XIV., in a letter to M. De la Barre, dated the 5th August, 1683, claimed that the actual possession of the territory about the Bay had been taken in his name prior to the possession of the English. His letter states: "I recommend you to prevent the English, as much as possible, from establishing themselves in Hudson Bay, possession whereof was taken in my name several years ago; and as Col. d'Unguent (Dongan), appointed Governor of New York by the King of England, has had precise orders on the part of the said King to maintain good correspondence with us, and carefully avoid whatever may interrupt it, I doubt not the difficulties you have experienced on the side of the English will cease for the future." (c)

The facts connected with the right of possession then claimed by the French King will be found in a letter from M. Talon to the King, dated Quebec, Nov. 2, 1671, in which he states that he had despatched Father Albanel and Sieur de St. Simon to Hudson Bay. (d) Then, further on, the result of their journey is thus described: "Father Charles Albanel, Jesuit Missionary, employed in the instruction of the Indian nations and Montagnais, and Paul Denis de St. Simon, Commissary, and deputed by M. Talon, Intendant of Canada, to take possession in the King's name of the countries, lands, lakes and rivers which lie between the banks of the River St. Lawrence as far as the shores of the Straits of the Fretum Davis, including Hudson Bay, and adjacent lands and seas, being at Miskaouto, Nagasit, places where the Indians meet to trade, and at the River Nemiskau (Rupert's River) which rises in Lake Nemiskau, the residence of Capt. Kiaskou, Chief of all the Indians inhabiting the North Sea and Hudson Bay, and on the 9th of July, 1672, planted the Cross, with the Captain's consent, and in His Majesty's name set up the arms of France, on the said Lake Nemiskau, at the mouth of the river of the same name. On the 19th of the same month, being at the River Minahigouskae, Sossibahourat, captain of the Mistasirenois, having consented, they did set up in like manner the said arms, after having turned up a sod of earth, pulled up some grass, planted some shrubs and performed other necessary ceremonies. They made known to the Indian nations, in their language, that they subjected them to the French nation, and that they should acknowledge in future King Louis XIV., for their Monarch and Sovereign Lord. In witness whereof, the said minute was signed by Father Albanel, Sieur de St. Simon and by Sebastian Provero; and the chiefs of each Indian nation, to the number of eleven, made their hieroglyphical marks." A similar surrender by the Indians on the west side of Hudson Bay took place at Sault Ste. Marie. (e) In these statements we have not only the actual taking possession, but we have that act of Indian surrender which has been recognized by the Crown of England for years; the actual surrender of the Indian territory by a document signed by the chiefs of those Indian who were the occupants of the territory about Hudson Bay, acknowledging that they surrendered the territory to the King of France, in the same manner as the Indian territories have been and still are surrendered to the Crown in Canada.

The Treaty of Utrecht did not surrender any portion of the territory of Canada or New France; it only restored the Bay and Straits of Hudson; therefore, whatever should be included in that description was ceded to the Crown of England. The English could not claim more territory than that named in the treaty, and "Canada" was not named or ceded, no part of it, as such, became the property of the Crown of England. The word used by the French was *restitura*. The rule

(a) Ibid, page 380. (b) Ibid, page 372. (c) Book of Documents, page 106. (d) Ibid, page 104  
(e) Ibid, pages 348 and 61-2.

interpretation in regard to such treaties is, that where the treaty is alleged to be capable of two interpretations, that which is most favorable to the ceding power shall govern. Such was the decision of the United States Supreme Court in the case of the *United States vs. Arredondo*. (a) In that case there was a difference between the American and Spanish copies of the treaty; but the court held that the version which was most favorable to Spain, the ceding power, should govern. In giving judgment the court said: "A Treaty of cession is a deed of the ceded territory; the Sovereign is the grantor, the act is his, so far as it relates to the cession; the treaty is his act and deed." "The King of Spain was the grantor; the treaty was his deed; the exception was made by him; and its nature and effect depended upon his intention expressed by his words in reference to the thing granted, and the thing reserved, and excepted in and by the grant" "We must be governed by the clearly expressed and manifest intention of the grantor, and not the grantee, in private—a *fortiori*, in public—grants."

Examining this Treaty by the light of this decision, we find that the French King "restored" only that which had been originally English territory—on the Bay and Straits of Hudson;—not by name any territory of Canada or New France. The French King being the ceding power, could not be held bound by a larger cession than the words of the Treaty covered. This view was strongly and effectively maintained by the French Commissioners. In M. de Lamothe's memoirs to the Duke of Orleans, he reported: "The English have never possessed the lands that the French have at Hudson Bay, therefore it is impossible for the King of France to restore them to them, for one cannot restore more than that which has been taken by usurpation. The fact is that at the time of the said Treaty of Utrecht, the French possessed one part of the Strait and Bay of Hudson, and the English possessed the other. It is very true that, some time before, the King of France had conquered the English part; and it is of this that it is understood that restitution is to be made."

(b.) To the same effect is the memoir of M. D'Auteuil, Attorney-General of Canada; "The Treaty of Utrecht speaks only of restitution; let the English show that which the French have taken from them, and they will restore it to them; but all that they demand beyond this they demand without any appearance of right." "It is well to remark that the English in all the places of the said Bay and Straits which they have occupied have always stopped at the border of the sea, while the French, from the foundation of the colony of Canada, have not ceased to traverse all the lands and rivers bordering on the said Bay, taking possession of all the places and founding posts and missions. They cannot say that any land, or river or lake, belongs to Hudson Bay, because if all the rivers which empty into this Bay, or which communicate with it, belong to it, it might be said that all New France belonged to them—the Saguenay and the St. Lawrence communicating with the Bay by the lakes. That this, being incontestable, it is for France to regulate the limits in this particular quarter, and that of the little which she may cede, she will always cede that which is her own, as the English cannot pretend to anything except a very small extent of the country adjoining the forts which they have possessed at the foot of the Bay. (c) And consistent with these views, it appears that after the Treaty the French erected a fort at the head of the Albany River. (d) The Hudson Bay Company claimed that the boundary should be at the 49th parallel, while the French insisted it should be at the 60th parallel. The object of the Company being, as stated by Chief Justice Draper, "to establish an arbitrary boundary and to secure the fur trade from the French." (e)

The negotiations between the Commissioners appear to have ended about 1720, probably because during that year several of the chief Ministers of State whose names appear in these papers—notably Mr. Secretary Craggs, the Earl of Sutherland, the Chancellor of the Exchequer, and others—became implicated in corrupt transactions with the South Sea Company, which caused their expulsion from Parliament the

(a) 6 Peters U. S., 691. (b) Book of Documents, page 370. (c) Ibid, page 368.

(d) Ibid, page 363. (e) Ibid, page 242.



following year. Their successors in the Government appear to have allowed the negotiations to lapse. "Nothing was done," wrote the Duke de Choiseuil in 1761.

The next chapters in this history are the capture of Quebec and the Treaty of Paris of 1763, by which Canada was ceded to England. By the Articles of the Capitulation of Montreal between General Amherst and the Marquis de Vaudreuil, in 1760, and the Treaty of 1763, France ceded to England, "in full right, Canada and all its dependencies, and the sovereignty and property acquired, by treaty or otherwise," and declared that "a line drawn along the middle of the River Mississippi" should be the limits of the British and French territories.

Neither in the capitulation between General Amherst and the Marquis de Vaudreuil, nor in the Treaty of 1763, is there any reference to the territories about Hudson Bay. But I take this ground now: By this capitulation, by this treaty, the English King succeeded to the sovereignty to the prerogative rights, and to the assertion of title, over the territories which the French King claimed about Hudson Bay. In addition to his own prerogatives as King of England, he became clothed with the prerogatives which had pertained to the King of France as the Sovereign over this territory; and this double prerogative was to be exercised in such a way as would best maintain the public right of the people to whose allegiance he had succeeded. The claim to the territories about Hudson Bay had not been a contest between the King of France and the Hudson Bay Company. It now became a question of territorial right between the King of England, as representing the possessory rights and sovereignty of the King of France, on the one side, and the Hudson Bay Company on the other. Succeeding therefore to the French sovereignty over this territory and people, the Crown of England had the right to claim as against the Hudson Bay Company, and all others, the French sovereignty, as if the French authority had not been suppressed, and as if the French authority was itself seeking to enforce its territorial claims. Viewed in the light of this claim of the double sovereignty which it thus had, the subsequent proceedings of the Crown of England in regard to the boundaries of Upper Canada, should weigh with the Arbitrators in determining what effect and what interpretation should be given to these subsequent proceedings as political acts of state. The interpretation, I take it, of this double sovereignty, must be that which was the largest and most advantageous for the public rights of the Sovereign and people. This doctrine of succession to sovereign rights has received judicial interpretation in regard to the property and territory, and sovereign rights, of a displaced power. And the judicial interpretation which I shall quote is cited with approval in the last edition of *Wheaton on International Law*, as being a fair and proper exposition of public law on that question. In the case of the *United States vs. McRae* (a), Vice-Chancellor (now Lord Justice) James, says: "I apprehend it to be the clear, public, universal law, that any Government which *de facto* succeeds to any other Government, whether by revolution or restoration, conquest or re-conquest, succeeds to all the public property, to everything in the nature of public property, and to all rights in respect of the public property of the displaced power,—Whatever may be the nature or origin of the title of such displaced power." "But this right is the right of succession, is the right of representation; it is a right not paramount but derived, I will not say under, but through the suppressed and displaced authority, and can only be enforced in the same way, and to the same extent, and subject to the same correlative obligations and rights, as if that authority had not been suppressed and displaced, and was itself seeking to enforce it." The same doctrine had been previously recognized in England, in the case of the *King of the Two Sicilies vs. Wilcox*, (b) *United States vs. Prioleau*, (c) and in Canada in the case of *United States vs. Boyd* (d) The Supreme Court of the United States has in various cases affirmed the same doctrine: that the new government takes the place of that which has passed away, and succeeds to all the rights and property of the original Sovereign.

(a) Law Reports, 8 Equity, 75. (b) 1 Simons N. S., 361. (c) 2 Hemming & Miller, 563.  
(d) 15 Grant's Chancery, 138.

Now, with reference to the alleged claims of the Hudson Bay Company to the lands south of Hudson Bay, to line 49°, it may reasonably be argued that there could be no estoppel between the Crown of England, clothed with the double sovereignty of the French and English Crowns, over this disputed territory, and the Hudson Bay Company. Whatever representations and claims the Hudson Bay Company may have induced the English Government to make prior to the cession of the territory, would not estop the Crown of England, having acquired the sovereignty which France had held, in any contention between it and the Hudson Bay Company.

Chief Justice Harrison.—I fancy that Great Britain could not have conferred on the Hudson's Bay Company any greater rights than Great Britain at the time of the grant possessed.

Mr. Hodgins.—The cession of the disputed territory would not accrue to the Hudson Bay Company.

Chief Justice Harrison.—Not in the absence of an express grant.

Mr. Hodgins.—We say that this territory about the south shore of Hudson Bay had been surrendered by Indian treaty to the Crown of France prior to the Hudson Bay Company's claim of title, and had been occupied and thenceforward claimed as French territory up to a period after the Treaty of Utrecht, and therefore could not have been granted to the Hudson Bay Company. And that there would be no estoppel operating in favor of the Hudson Bay Company by reason of the subsequent acquirement of that territory by the Crown of England, in 1763.

We come next to the King's Proclamation of the 7th October, 1763, under which the Provinces of Quebec, East and West Florida, and Grenada, were established. In that Proclamation there seems to be an express reservation. The Proclamation is not printed in full in Book of Documents, but it will be found in a work which I obtained from the Education Department of Ontario, in which the terms of Capitulation, the Treaty of Peace, and the Proclamations in regard to the earlier establishment of Quebec and the other Provinces, are collected. That Proclamation reserves out of the extensive and valuable acquisitions in America secured to the Crown by the Treaty of Paris, other territories than those placed under the four governments then constituted, viz., a territory not yet ceded to the Crown, which, I assume, included the Indian territories before referred to, and a territory beyond the sources of the rivers which fall into the Atlantic. It was assumed at that time, and some of the maps confirmed the assumption, that Lake Winnipeg was connected with Pigeon River, and so through the great lakes with the St. Lawrence. The Crown therefore reserved for future disposition the territories referred to, and expressly limited the jurisdiction of the Governors in the new Provinces in a way markedly different from the Commissions which issued subsequently under the Quebec Act: "That no Governor or Commander-in-Chief do presume, upon any pretence whatever, to grant warrants of survey, or pass any patents for lands beyond the bounds of their respective governments, or for lands beyond the heads or sources of any of the rivers which fall into the Atlantic Ocean, from the west or the north-west, or any lands whatever, which, not having been ceded to or purchased by us, are reserved to the Indians."

The next document in point of time is the Quebec Act of 1774. The Attorney-General has left me little to add in construing that Act, and he has shown that the words "during His Majesty's pleasure," preserved the future exercise of the Royal Prerogative. The Dominion contends for the most limited construction which can be placed upon the term "northward" in that Act—that it means "due north." The rule is otherwise stated by the Supreme Court of the United States: "In great questions which concern the boundaries of States—when great natural boundaries are established in general terms with a view to public convenience and the avoidance of controversy—the great object, where it can be distinctly perceived, ought not to be defeated by those technical perplexities which may sometimes influence contracts between individuals." (a) But apart from the construction placed by the Crown upon that word "northward," immediately after the passing of the Act, we find in

(a) *Handley's Lessee v. Anthony*, 5, Wheaton, 574.



the preamble of the Act, and on the ground within the disputed territory—that is, between the line drawn “due north” from the junction of the Ohio and Mississippi, and the line of the “banks of the Mississippi River,” irresistible arguments against the contention of the Dominion. Now, within that disputed territory between the lines referred to, there were, at the time, several well-known settlements and trading forts of the French, as shown on the maps: Forts Kaministiquia, St. Pierre, St. Charles, La Pointe or Chaconamicon, St. Croix, Bonsecour, St. Nicholas, Creveceur, St. Louis, De Chartres, and the settlements on Lake Superior, west of this “due north” line.

The preamble of the Act shows that the intention of Parliament was to extend civil government over French settlements left out of governmental control; for after reciting the Proclamation of 1763, it says: “Whereas by the arrangements made by the said Royal Proclamation, a very large extent of country, within which there were several colonies and settlements of the subjects of France who claimed to remain therein under the faith of the said Treaty, was left without any provision being made for the administration of civil government therein.” Now, if the object of the Act, as stated in the preamble, was to extend civil government over the colonies and settlements not theretofore within the limits of any of the Provinces, can any reasonable argument be advanced for excluding from the benefits of that Act a long and narrow strip of territory containing the settlements and forts named, lying between this “due north” line and the eastern banks of the Mississippi? England, at the surrender of Canada, claimed to the line of the Mississippi, and the map produced by the Dominion as the one containing the line traced between General Amherst and the Marquis de Vaudreuil, shows that the line started from Red Lake, one of the sources of the Mississippi. And, as if to place the boundary beyond question, the Treaty declares that the limits between the British and French Territories shall “be fixed irrevocably by a line drawn along the middle of the River Mississippi, from its source, to the River Iberville,” etc.

But,—still keeping in view the object of the Quebec Act as set forth in the preamble, and remembering that the Crown in its negotiations with France had perseveringly insisted upon the line of the Mississippi as the western boundary of Canada, and had obtained that boundary,—there is a further point which I would press upon the Arbitrators. The first document promulgated by the Crown immediately after the passing of the Act, was a Commission to Sir Guy Carleton, in December, 1774, as Governor General of the new Province of Quebec, and it gives an authoritative interpretation by the Crown of the indefinite word “northward,” used in the Act of Parliament, and which was peculiarly within the power and prerogative of the Crown to interpret. That Commission gives the boundaries mentioned in the Quebec Act until it comes to the words “westward to the banks of the Mississippi and northward,” not “due north,” but “northward along the eastern bank of the said river (Mississippi).” This description must be taken to be the Crown’s interpretation of the boundaries which the Act of Parliament had established for the Province of Quebec, and was a political act of state within the prerogative right of the Crown—to fix the boundaries where they were uncertain, and even to extend them if necessary; and such act of the Crown is binding upon the Arbitrators and cannot now be questioned. That Governor General, as well as his successor, had thus from the Crown complete jurisdiction over the territory to the line of the banks of the Mississippi. But when the southern portion of the Province of Quebec was ceded to the United States, by the Treaty of 1783, the Crown had again to interpret the Quebec Act as to the remaining territory; and in the Commission issued by the Crown in 1786, appointing Sir Guy Carleton Governor General over what remained of the Province of Quebec, the Crown defined that Province as extending in the west to the Lake of the Woods and the Mississippi River. (a)

These Commissions to the Governors were political acts of state or of sovereign power over the territory in question, and brought the territory within the jurisdiction of the civil government of Quebec delegated to the Governors. The courts of the

(a) Book of Documents, pages 47-48.

United States have been called upon to determine questions of boundaries similar to that now before the Arbitrators; and by a consensus of decisions from 1818 to the present, their courts say that in all these questions affecting boundaries the act is a political act. We call it a prerogative act. They hold that where the political act has been recognized either by the Executive or by Congress, either officially or in legislative documents, or in diplomatic controversies with foreign nations, that the interpretation put upon the boundaries of territories, and the limitation of such boundaries, and the claim in regard to such boundaries, shall govern the civil courts. Chief Justice Marshall, in delivering the judgment of the Supreme Court on the question of the boundaries of Louisiana and West Florida, in the case of *Foster v. Neilson*, (a) says: "After these acts of sovereign power over the territory in dispute, to maintain the opposite construction would certainly be an anomaly in the history and practice of nations. If the Government have unequivocally asserted its right of dominion over a country of which it is in possession, and which it claims under a treaty, if the legislature has acted on the construction thus asserted, it is not in its own courts that this construction is to be denied. A question like this, respecting boundaries of nations, is more a political than a legal question, and in its discussion the courts of every country must respect the pronounced will of the Government. To do otherwise would be to subvert those principles which govern the relations between the legislative and judicial departments, and mark the limits of each." This judgment has been cited with approval, and has been followed in all subsequent cases of disputed boundaries of states or territories.

But we are not limited to these unquestioned and unquestionable prerogative acts of the Crown in interpreting the statute. We come next to the division of the Province of Quebec into Upper and Lower Canada; and if words mean what they express, then the words used in the Order in Council (b), in the paper presented to the Houses of Parliament, previous to the passing of the Act of 1791 (c), in the Proclamation of General Clarke (d), and in the Commissions which were subsequently issued to the Governors under that Act (e), shew conclusively the intention of the Crown as to the boundaries of the new Province of Upper Canada, whether as dividing the old Province of Quebec, or as settling the uncertain course of the "northward" line of the Quebec Act. The Order of the King in Council and the Proclamation issued immediately after the passing of the Act, were also "acts of sovereign power over the territory" in question, and are, we contend, as binding on the Arbitrators as they would be on a court of justice. If these acts of the Crown were more than a division of the Province of Quebec; if they were also an extension of the boundaries of the old Province of Quebec, they are equally acts of the prerogative, done with the concurrence of the other estates of the realm, and are binding upon this arbitration as a court of justice. Therefore, in whatever light the Order in Council of 1791, and the Proclamation under it, are viewed, that Proclamation—giving the boundaries described in the paper presented to the Parliament, and sanctioned by the Order in Council—is the document which determines what are the boundaries of the Province of Ontario. It determined what were the boundaries of the Province of Upper Canada. The Statute of 1841 united the Province of Upper Canada with the Province of Lower Canada, but did not alter the boundaries of either. The Confederation Act of 1847 declares that the boundaries of the former Province of Upper Canada shall be the boundaries of the Province of Ontario. Thus, we are brought back to the Order in Council and Proclamation of 1791, as to what are the true boundaries of Ontario. The paper submitted to Parliament, and the Proclamation, give two limits.

*First*.—That the boundary shall commence at the St. Lawrence at Longueuil, thence to the Ottawa River, thence up the Ottawa to the head of Lake Temiscaming, and thence in a line "due north until it strikes the boundary line of Hudson Bay"—not, of the Hudson Bay Company's territory. And we have in the Commissions to the Governors-General, as the Attorney-General has stated, a further interpretation of

(a) 2 Peters, U.S., 254. (b) Books and Documents, p. 388. (c) Ibid, p. 411. (d) Ibid, p. 27. (e) Ibid, pages 48-53.



the word "boundary"—the use of the word "shore." From 1791 to 1846 every commission issued by the Crown, contains the expressions, "strikes the boundary line," or "strikes" or "reaches" the "shore of Hudson Bay." No less than eighteen Commissions issued by the Crown of England to the Governors between those dates use the terms "strikes" or "reaches" the boundary line or the shore of Hudson Bay. Therefore we contend that the Crown of England, having what may be called the double sovereignty of the French and English Crowns in regard to that disputed southern shore of Hudson Bay—whether the former sovereignty had been admitted or denied—intended that this new Province of Upper Canada should extend to the southern shore of Hudson Bay.

*Second.*—The Parliamentary paper and the Proclamation say, "westward to the utmost extent of the country commonly called or known by the name of Canada." Now, the Crown here uses a word which the Crown had knowledge of. In the negotiations with the French King, the Crown had been contending for the cession of the country called or known by the name of "Canada." It had obtained, first by conquest, and then by treaty, the territory or country called or known by the name of "Canada." Now, the limits of Canada were known either from description in State documents, or from a known extent of territory—known to the Crown and to the officers of the Crown—or known by localities which had certain names admitted to be within the territory or country called or known by the name of "Canada." To aid us in finding the extent of Canada, we may refer to maps published in England and France prior to and at the time of this Proclamation. We may also refer to the prior admissions or reports by the officers of the English and French Governments; to the works of historians and geographers, and the knowledge acquired by the actual experience of travellers; and from all these we can obtain with tolerable certainty a knowledge of the extent of the territory called or known by the name of "Canada." Now, it is not necessary, so far as this arbitration is concerned, to consider that portion south of the present boundary between the United States and ourselves, or to determine whether it was part of Canada or not. I have argued that it was; and the United States Courts in dealing with questions of titles there have held that the territory lying to the east of the Mississippi was formerly Canada, and, that the United States had succeeded to the title of the King of France in that part of Canada which he had prior to the conquest by Great Britain in 1759, and which was ceded to England by the Treaty of 1763 (a). So far, therefore, as that territory is concerned, had it remained the property of England it would have become part of the new Province under the term "Canada," used in the proclamation of 1791. North of the line of the Mississippi, and north of what is now the international boundary, there were French forts or trading posts. These French forts—Fort Bourbon, Fort Dauphin, Fort La Reine, Fort Rouge, Fort St. Charles, Fort Maurepas, Fort St. Pierre and Fort Kaministiquia—appear on both French and English maps published prior and subsequent to the surrender of Canada. Now, to what sovereign did these forts belong? Did they belong to the Sovereign of England or of France? Were they occupied by English or by French subjects? Every record we have, whether taken from English or French sources, admits that these forts were French, that all through that interior western country the French had established their posts, had carried on trade with the Indians, and were more adventurous than the English. The English had simply occupied a scattered fringe of posts on the shores of Hudson Bay, while the French had gone into the interior of the country, had established these trading posts, and by virtue of their establishment had occupied the territory with the knowledge and tacit acquiescence of the English—if the English had been entitled by the possession of the coasts to that interior country,—had occupied the interior portions of the country, and made settlements, and had therefore acquired for the King of France the dominion and sovereignty of that territory. That interior territory, therefore, as part of the territory of Canada, was surrendered under the Treaty of 1763. I think that this is put beyond question by the articles of capitulation.

(a) *United States vs. Repetigny*, 5 Wallace, U.S., 211.

lation between the Marquis de Vaudreuil and General Amherst. Article 3 mentions the posts situated on the frontiers—Detroit, Michilmackinac, and other posts. Article 25 provides for the affairs of the trading company known as the Indian or Quebec Company, referred to in the Treaty of Utrecht. Article 37 provides that the Canadians and French “settled or trading in the whole extent of the Colony of Canada,” shall preserve peaceable possession of their goods, both movable and unmovable; they shall also retain the furs in the “posts above” which belong to them, and those which may be on their way to Montreal; and they shall have leave to send canoes to fetch furs which shall have remained in the posts. These particular references to the settlements and posts in the countries above, clearly point to the French trading posts on Lake Superior and in the country west of that Lake. Then, we have the map which is printed in the Dominion case, which shows that whatever may have been the dispute between the Marquis de Vaudreuil and General Amherst as to the Mississippi, the Marquis admitted that the western boundary of Canada extended to Red Lake—a lake immediately south of the Lake of the Woods. They did not dispute as to the territories north of that lake; and the terms of the capitulation covered the posts and forts in the countries above, which posts and forts were those I have mentioned, some of which were in what has since been known as the Red River Territory.

After these admissions by the Marquis de Vaudreuil on behalf of the King of France, respecting “the posts and countries above,” could the French be heard contending that the country within which these posts and settlements were to be found, was not a portion of Canada? French officers had established posts there for the benefit of the Government of Canada. A trade was carried on between those posts and Montreal, and by distinct references, in the terms of the capitulation, provision was made respecting the French subjects and their property and furs therein, which would have been improper unless as referring to the territory of Canada then surrendered to the British Crown. The only dispute between the British and French was whether the south-westerly boundary should be along the River Ohio or along the River Mississippi. Then, if those western posts and settlements formed part of the country commonly called or known by the name of “Canada,” clearly they were included in the boundaries of Upper Canada, by the Proclamation of 1791. Fort Nepigon, Fort Kaministiquia—tracing them westward,—Fort St. Pierre, St. Charles, La Reine, Maurepas, Dauphin, Bourbon,—some of them on Lake Superior, others on Pigeon River and the Lake of the Woods, Lake Winnipeg and Lake Manitoba. The evidence that these forts did exist is found, not only in the documents furnished to the Arbitrators, but some of them are referred to in Sir Alexander Mackenzie’s travels. The preface to his work contains the following statement at page lxxv.: “Fort Dauphin, which was established by the French before the conquest;” and again, at page lxxiii.: “It may be proper to observe that the French had two settlements upon the Saskatchewan long before and at the conquest of Canada, the first at the Pasquia, near Carrot River, and the other at Nepawi, where they had agricultural instruments and wheel carriages, marks of both being found about those establishments, where the soil is excellent.” The Nepawi settlement mentioned by Mackenzie is Fort St. Louis, or Nipewoon, on the Saskatchewan. He also refers to Fort Kaministiquia as having been under the French Government of Canada.

Now, the Dominion case asserts a general principle of international law, which, if there was no countervailing doctrine or fact against it, would be held to be clearly applicable to cases where there was only the simple fact of possession. “When a nation takes possession of a country with a view to settle there, it takes possession of everything included in it, as lands, lakes, rivers, etc.” That is true to a limited extent; but this other doctrine is also true: that where the subjects of another Crown take possession of the same territory—either close to the settlements originally made by the first discoverers, or get by some means into the interior of that territory, to the head waters of the rivers which flow down through the territory first settled—the subjects of the other Crown become entitled to that possession and



territory if they are allowed to remain undisturbed, and their Sovereign becomes entitled to the dominion over that territory. I quote first from Twiss on the *Law of Nations in Time of Peace*, page 166: "When discovery has not been immediately followed by settlement, but the fact of discovery has been notified, other nations by courtesy pay respect to the notification; and the usage of nations has been to presume that settlement will take place within a reasonable time; but unless discovery has been followed, within a reasonable time, by some sort of settlement, the presumption arising out of notification is rebutted by *non user*, and lapse of time gives rise to the opposite presumption of abandonment." He then quotes the argument of the English Plenipotentiaries at the conference between Great Britain and the United States, in 1826, that it is only in proportion as first discovery is followed by exploration; by formally taking possession in the name of the discoverer's Sovereign; by occupation and settlement more or less permanent; by purchase of the territory on receiving the sovereignty from the nation, or some of these acts, that the title is strengthened and confirmed.

The rule is further stated in *Vattel's Law of Nations*, page 170: "If, at the same time, two or more nations discover and take possession of an island or other desert land without an owner, they ought to agree between themselves and make an equitable partition; but if they cannot agree, each will have the right of empire and domain in the parts in which they have first settled." Apply this to the case of the English and French struggling for the right of possession and sovereignty over this northern continent. Admit that the English did make discoveries and settlements on the shores of Hudson Bay. The French, prior to that, had made settlements along the St. Lawrence and up towards Hudson Bay, and subsequently within the interior of the country where the rivers flowing into Hudson Bay took their rise. The two nations should agree as to their limits; but if they do not or cannot agree, each nation has the right of empire in the part respectively first settled by its subjects. The English will thus be entitled to so much of the shores of the Bay and of the interior country as will not interfere with the possessory rights of the French at the Bay and in the west. The French will have the right to the territory they had settled upon, and up to such a line, as the Chief Justice referred to when he suggested the illustration of a line along the middle of a river; so that it must be between the English settlements on the Bay and the French settlements on the Bay and in the interior that the line should be drawn. The English, after making a few small settlements on the shores of the Bay, rested there for years, and neglected to take possession of the interior. The French then took possession; and the effect of these acts of the two nations is governed by the rule thus stated by Vattel, at page 171: "It may happen that a nation is contented with possessing only certain places, or appropriating to itself certain rights in a country which has not an owner, without being solicitous to take possession of the whole country. In this case another nation may take possession of what the first has neglected; but this cannot be done without allowing all the rights acquired by the first to subsist in their full and absolute independence;" that is, to the extent of the territory they have acquired, or to the middle line between the two territories. And it is interesting to find the opinion of an English Sovereign, Queen Elizabeth, affirming a principle which has since been recognized as the correct one by writers on international law.—In *Twiss on the Law of Nations*, at page 173, we find the following: When Mendoza, the Spanish Ambassador, remonstrated against the expedition of Drake, Queen Elizabeth replied that she "knew no right that the Spaniards had to any places, other than those they were in actual possession of. For that they having touched only here and there upon a coast, and given names to a few rivers and capes, were such insignificant things as could in no wise entitle to a propriety, further than in parts where they actually settled and continued to inhabit." Again Twiss says, at page 175: "Settlement, when it has supervened on discovery, constitutes a perfect title; but a title by settlement, when not combined with a title by discovery, is in itself imperfect, and its immediate validity will depend upon one or other condition: that the right of discovery has been waived, *de jure* by *non-user*, or that the right of

occupancy has been renounced *de facto*, by the abandonment of the territory." "Again the presumption of law will always be in favor of a title by settlement." "Where a title by settlement is opposed to a title by discovery, although no convention can be appealed to in proof of the discovery having been waived, still a tacit acquiescence on the part of the nation that asserts the discovery, during a reasonable lapse of time since the settlement has taken place, will bar its claim to disturb the settlement." Wheaton, referring to this rule, says on page 220: "This rule is founded upon the supposition, confirmed by constant experience, that every person will naturally seek to enjoy that which belongs to him; and the inference—fairly to be drawn from his silence and neglect—of an original defect in his title or his intention to relinquish it."

Thus the Arbitrators will see that international law has incorporated the same doctrine of prescription as that which prevails in the municipal courts of every civilized community. Assuming that the Hudson Bay Company had the right under their charter to go up those rivers which flowed into Hudson Bay, and settle the country, did they exercise that right or did they acquiesce in another nation taking that right from them? Clearly, they did so acquiesce. They knew that the French had gone inland to the heads of the rivers flowing into Hudson Bay, and were trading with the Indians there; they knew that the French had established their forts and posts there; and they knew that these forts and posts indicated an occupation and settlement of the territory; and they knew all the legal results flowing from that occupation and settlement, which gave the French King proprietary and sovereign rights there; and they acquiesced in that occupation from the time the French settlements were made, and had acquiesced in it, up to the time of the cession of Canada in 1763; and the Hudson Bay Company, and those who now claim under them, cannot be heard asserting to-day that there was no acquiescence, and that there was no *non-user* of the right which the charter gave them, of going into the interior and occupying this territory as their own. The Hudson's Bay Company, and the Dominion as claiming under them, assert title to the height of land or watershed line, on the ground that having taken possession of the mouths of certain rivers at Hudson Bay, they were entitled to all the lands watered by the rivers flowing into the Bay. A similar ground was taken by the United States in 1827, but Twiss (p. 174) combats it, and shows it to be irreconcilable with other rules of international law to which all nations agree. And referring to the argument founded upon the grants in such charters as that to the Hudson Bay Company, he says (p. 173): "Those charters had no valid force or effect against the subjects of other Sovereigns, but could only bind and restrain, *vigore suo*, those who were within the jurisdiction of the grantor of the charters; and that although they might confer upon the grantees an exclusive title against the subjects of the same Sovereign power, they could only affect the subjects of other sovereign powers so far as the latter might be bound, by the common law of nations, to respect acts of discovery and occupation effected by members of their independent political communities."

Apply these doctrines to the case of the Province, and the result is clear. We have established the fact of the early surrender of the Indian title to the territory around the southern shores of Hudson or James' Bay to the French King; the fact of the actual settlement and occupation of these interior posts by the French, and which, according to the rules of international law, had made that territory part of Canada or New France. We stand on the territorial rights which the French King had thus acquired; which the French King, in 1763, ceded to the English Crown as the Colony of Canada; which by the Quebec Act and Commissions to Governors, came the north-western part of the Province of Quebec; which, by the Order in Council and Proclamation of 1791, and the Commissions to Governors, became the former Province of Upper Canada, and which, by the British North America Act, is now become the territorial extent of the Province of Ontario.



## 9.—PRELIMINARY MEMORANDUM

BY THE HONORABLE WM. MCDUGALL, C.B., FOR THE INFORMATION OF HIS EXCELLENCY THE LIEUTENANT-GOVERNOR OF ONTARIO, ON THE SUBJECT OF THE WESTERN BOUNDARY OF THE PROVINCE.

The undersigned, appointed a Commissioner for the Province of Ontario to act in conjunction with a Commissioner on behalf of the Dominion "in the matter of the settlement of the boundary line between Ontario and the North-West Territories," has the honor, in compliance with the request of the Provincial Secretary, communicated to him by letter bearing date the 5th March, 1872, to submit the following memorandum upon the subject of the "North-West Boundary."

As the undersigned has not yet been put in communication with the Commissioner on behalf of the Dominion, he is unable to submit a report in conjunction with that officer.

A preliminary statement of his own views as to the true position of the western boundary line of the Province, and a brief reference to the authorities and proofs which he has thus far been able to collect in support of the conclusions at which he has arrived, will probably meet the wishes of the Government as expressed in the letter of the 5th inst.

It will be convenient to consider, in the first place, the western boundary as distinguished from the north-western or northern boundary of the Province.

There are *four* possible lines, any of which, it may be contended with more or less plausibility, is the western boundary of Ontario.

1. The meridian of  $88^{\circ} 50'$  west from London, or a line *due north* from the mouth of the Ohio River;

2. A line commencing at the height of land, west of Lake Superior, at the international boundary, and following the water-shed of that lake, in a north-easterly direction, to the southern limit of Rupert's Land wherever that may be found;

3. A line from "the most north-western point of the Lake of the Woods," northward to the southern limit of Rupert's Land."

4. A line northward from the source of the Mississippi River to the southern limit of Rupert's Land.

There is at least a difference of six degrees of longitude between the first or most eastern, and the last, or most western, of these lines. In other words, the adoption of the last mentioned line would give to the Province three hundred miles of territory on the west, which would be cut off by the adoption of the first line, including Thunder Bay, and nearly all the mineral lands which have been surveyed or sold in that neighborhood.

(1.) It is contended by some that the first, or Ohio River meridian, is the true legal boundary of Ontario on the west, because the Imperial Act of 1774, known as the Quebec Act, defined the boundary of Canada after it reached the north-west angle of the Province of Pennsylvania, as follows:—

"And thence along the western boundary of the said Province (of Pennsylvania) until it strikes the River Ohio, and along the bank of the said river westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchant Adventurers trading to Hudson Bay."

If by the word "*northward*" the Imperial Parliament meant *north* or *due north* (as the Court of King's Bench for Lower Canada, held in the trial of *de Reinhard*, in 1818), then the meridian of  $80^{\circ} 50'$  (or whatever the meridian of the right bank of Ohio at its junction with the Mississippi may be ascertained to be), will be the line which, in 1774, formed the western boundary of Canada.

In the opinion of the undersigned, the word "*northward*" in the Act of 1774 does not mean and was not intended to mean either "*north*" or "*due north*," but "*northerly*," or "*northward*," along the banks of the Mississippi River to the southern boundary of the territory granted to the Hudson Bay Company, as will be hereafter shown.

(2.) The "height of land" limit would take the line about two degrees further west, starting from the present international boundary, and it would then run in a north-easterly direction for about two hundred miles before intersecting the meridian  $88^{\circ} 50'$ , the supposed limitary line of 1774.

This may be designated the Hudson Bay Company's line, as the only authority for it is to be found in documents and maps emanating from them. It has never, as the undersigned believes, been recognized in any Act of Parliament, or by any Court of Law, nor in any Royal Proclamation as the western boundary of Canada. It has always been rejected by the Canadian Government as a mere assumption, or rather *usurpation*, on the part of the Company. When, after the Union of the Hudson Bay Company with the North-West Company of Canada, the new monopoly adopted the ingenious and convenient theory that the Charter of 1670, included all the north-western Territories unwatered by rivers and lakes falling ultimately into Hudson Bay, they reconstructed their maps, and laid claim to the whole country between the water-shed of Lake Superior and the Rocky Mountains. If it can be proved that this claim of the company, under their Charter, was a legal and valid claim, then the Act of 1774, admitting that the word "northward" was meant to designate the line of the Mississippi, would not carry the western boundary of Canada beyond the height of land referred to "the southern boundary of the Territory granted" to the Hudson Bay Company would, on this theory, have been met with in the now State of Minnesota, about 100 miles south of the present international boundary.

That this was not the construction put upon the Charter in 1774, either by the Imperial Government, or by the Company, can be easily shown. All the maps of that period, even those issued by the Company, placed the southern boundary Rupert's land (on the line of the Mississippi) to the north of the Lake of the Woods, and therefore beyond the water-shed of Lake Superior.

(3.) The line from the north-western point of the Lake of the Woods will be more conveniently discussed after considering the Mississippi line.

(4.) The contention that the Mississippi River formed the western boundary of Canada from the passing of the Act of 1774 to the Treaty of Paris (acknowledging the independence of the United States), in 1783, is sustained by the following (among other) facts, proofs and considerations:—

a. The Act of 1774, as already stated, describes the western boundary of Canada. That Act is not as explicit or unambiguous as it might have been. The undersigned thinks he has discovered both the cause of the ambiguity and the means of removing

In consequence of the rigid enforcement of the Standing Order of the House of Commons against strangers, and the printing or publishing of the speeches of Members, when the Act of 1774 was passed, no report of the debates which it evoked could be found prior to 1839. In that year (1839) Mr. Wright, editor of the Parliamentary History of England, published an interesting and remarkable report of the debates on the Quebec Government Bill of 1774, taken in short-hand by Sir Henry Cavendish, who was a Member of the House of Commons at the time. It was found in the British Museum among the Egerton manuscripts, and is of undoubted authority. From these debates it appears that the Quebec Bill was first carried through the House of Lords. It came down to the Commons, and was there proposed by Lord North, who explained the reason for extending the limits of the Province of Quebec, fixed by Royal Proclamation in 1763. He mentions expressly "the country westward of the Ohio to the Mississippi, and a few scattered posts to the west," as having been added in order that "there should be some government" for the settlers and traders in these distant countries (*Cavendish Debates*, pp. 9, 184.) The description of the Bill, as framed by the Government and carried through the Lords, was in these words:—

"Be it enacted that all the said territories, islands, and countries" (referred to in the preamble) "heretofore part of the territory of Canada, in North America, extending southward to the banks of the River Ohio, *westward to the banks of the Mississippi*, and northward to the southern boundary of the territory granted to the



Merchant Adventurers of England trading to Hudson Bay, etc., be, and they are hereby, during His Majesty's pleasure, annexed to and made part and parcel of the Province of Quebec, etc."

This mode of describing the bounds of the enlarged Province of Quebec is explicit enough. The intention of the Government to make the Mississippi the western limit of the Province does not admit of doubt. Why was the language of the description altered in the Act as finally passed? The debates in Committee show that it was done at the instance of Mr. Edmund Burke, who was English Agent for the Province of New York, and was apprehensive that some portion of that Province might be transferred to Quebec by the description as it stood in the Bill. Lord North, to satisfy Mr. Burke and his clients, consented to an alteration by which a line of boundary was substituted on the south for the indefinite terms of the Bill. As no private interests were affected by the proposed western or north-western boundary, that part of the original description was allowed to remain. The amendment was made in haste, and, as often happens, without any one at the moment noticing its incongruity with the former mode of description. Sir Henry Cavendish gives us the following account of the amendment:—

"The first clause being read, there was much puzzling about settling the boundary line. Mr. Edmund Burke, Mr. Jackson, Mr. Baker and Sir Charles Whitworth, went up stairs in order to settle it, while the House was supposed to be proceeding on it. The House continued for at least an half an hour, doing nothing in the meantime. The difference was—whether the tract of country not inhabited should belong to New York or Canada. At five o'clock Mr. Burke returned with the amendments, some of which were agreed to, others not." (*Cavendish Debates*, p. 253).

Throughout the debates no objection was made to the Mississippi as the western boundary. There is no evidence of an intention to alter that boundary either by the Government or the Committee, and the conclusion seems irresistible that Parliament, as well as the Government, intended that the Mississippi should bound the Province on the west. The word "northward" (though its meaning in the Act is different from its meaning in the Bill) is not inconsistent with that intention. The Mississippi, as delineated on the maps of that date, is nearly due north for about 500 miles above the mouth of the Ohio. It forms exactly that kind of boundary for which Mr. Burke contended. "Nothing," says he, "can be more geographically distinguished than water and land. This boundary is physically distinguished; it is astronomically distinguished (referring to the parallel of 45° which had been determined by Commissions at the head of Lake Champlain). We have everything that geography, astronomy and general convenience, stronger sometimes than either, can give to make this boundary definite." (*Cavendish Debates*, p. 194).

(b) In framing the Treaty of Paris, a few years later, the Imperial Government recognized the Mississippi as an existing territorial boundary. All the country east of that river, and south of a line drawn through the middle of the great lakes to the most north-western point of the Lake of the Woods, was surrendered to the United States. All the country west of the Mississippi, extending south to 31° of north latitude, and east to the Atlantic Ocean, was left to its former owners. This Mississippi was supposed, at that time, to take its rise to the west and north of the Lake of the Woods. (See *Bowen's*, *Mitchell's* and other Maps by Royal Geographers, 1775 to 1783).

(c.) The construction put upon the Act of 1774 by the Court of King's Bench of Lower Canada in *DeReinhard's* case cannot now be regarded as an authority. The court admitted that the question of boundary was brought before them "incidentally." They concluded their judgment on the point as follows:—

"The power of deciding finally is, however, at home. The question will be taken before the King and his Council, and on deciding the limits of Upper Canada they will either confirm or reverse our decision, according as we have done right or wrong, so that as to any consequences that may result from our error, if error we have committed, they will be obviated by the superior authority to whom the question is to be referred."

DeReinhard was charged with murder, and the court, holding that the place of the crime (some part of the Winnipeg River) was beyond the limits of Upper Canada, asserted their jurisdiction under the Act 43 George III, c. 138, and convicted the prisoner. He was sentenced to be executed, but the sentence (the case being referred to the Imperial Government) was not carried out. It is believed, and the point can no doubt be ascertained in England, that the law-officers advised the discharge of the prisoner on the ground that the court was mistaken as to the western limit of Upper Canada. See *Report of the Select Committee of Legislature of Canada, 1857. Appendix No. 8*, and see *House of Commons Report, 1857, on Hudson Bay Company, p. 397*.

(d) Chief Justice Draper, who was sent to England in 1857 by the Canadian Government to maintain the claims of Canada against those of the Hudson Bay Company, was examined before the House of Commons Committee, and in answer to question on the subject of the western boundary of Canada, stated that,—

"The only western boundary which is given to the Province of Canada is the Mississippi River." (*H. B. Report, 1857; question 4,133.*)

"All the documents emanating from the Crown, which will give western boundary to Canada, give the Mississippi River." (*Question 4,134.*)

(e) The Right Hon. Edward Ellice, the representative of the Hudson Bay Company before the same Committee, did not dispute the claims of Canada on this point. On the contrary, he admitted that the Mississippi was its western boundary. He was asked,—“Have you ever considered the question of a boundary between your territory and Canada?”

A. “Yes; I have considered it very much.” And, after giving his views as to the effects of the charter, he says: “Then, if you come down to the Act of Parliament constituting the boundaries of Canada, which I hold, after all, to be the great authority on which we must proceed, the Act of Parliament defines the limits of Canada to be bounded, *westward* by the Mississippi; and thence to where the line touches the lands granted to the Hudson Bay Company.” (*Report p. 329; question 5,833.*)

Assuming, then, that the Mississippi River was the western boundary of the Province of Quebec, as fixed by the Act of 1774, we must follow the river to its source. According to the best American maps, the principal branch appears to take its rise in Lake Itasca, on or near the meridian of 95 degrees west longitude, and about 47 degrees north latitude. The Mississippi, as already observed, was supposed, in 1774, and even in 1783, to take its rise to the north and west of the Lake of the Woods. If that supposition had proved correct, the point at which the western boundary of Canada intersects the present international boundary would be easily determined. In what direction must that line be drawn under the terms of the Act of 1774, when the natural boundary has been traced to its natural termination? The point to be reached was the southern boundary of the Hudson Bay Company's territories, or Rupert's Land. As “northwards” can no longer be explained or defined by the course of the river, it seems that a *due north* line, or a line *northwards* in the general direction or course of the river from the Ohio to its source, are the only alternatives. In case a due north line is adopted, which is, perhaps, the most reasonable, or the least objectionable alternative, the meridian of 95 degrees will be the western limit of Ontario, from its intersection with the 49th parallel to the southern boundary of Rupert's Land, wherever that southern boundary may be found.

In either of the cases last mentioned the western limitary line so to be found will be the most western of the four possible lines discussed in this memorandum. It remains for the undersigned to mention the evidence which he has discovered in favor of No. 3, or the Lake of the Woods line, and which, in his opinion, conclusively shows that the western boundary of Upper Canada, at its southern limit or starting point, is and has been, ever since the Treaty of Paris of 1783, or, at all events, since the 22nd April, 1786, identical or coterminous, with “the most north-western limit of the Lake of the Woods.”



1. Interprovincial boundary lines, in the absence of express statutory definition, are fixed by prerogative. In *De Reinhard's* case the court said: "Original jurisdiction relative to the colonial territories of the King is in the King and his Council."

2. The Act of 1774 did not oust the jurisdiction of the Crown in the matter of boundaries. It established the limits of the Province of Quebec only "during His Majesty's pleasure." (14 Geo. iii, cap. 83, sec. 1).

3. In 1786 the King commissioned Sir Guy Carleton as "Governor-in-Chief in and over our Province of Quebec in America, comprehending all our territories islands and countries in North America, *bounded on the south* by a line from the Bay Chaleurs, &c.," describing the line through the lakes to Lake Superior, and through that lake as follows:—"Thence through Lake Superior, northward of the Isles Royal and Phillippeaux to the Long Lake, thence through the middle of said Long Lake and the water communication between it and the Lake of the Woods, to the said Lake of the Woods, thence through the said lake *to the most north-western point thereof*, and from thence on a due west course to the River Mississippi, and northward to the southern boundary of the territory granted to the Merchant Adventurers of England trading to Hudson Bay. (*See copy among the Chisholm Papers, Parliamentary Library, Ottawa.*)

It will be seen that this definition of boundary would carry the limitary line on the *west* to the same point (on the parallel of latitude which cuts the most north-western point of the Lake of the Woods) at which the Act of 1774 *intended* to place it, namely the Mississippi River. But it was afterwards discovered that the Mississippi River had its source two degrees to the south of this parallel. In the Treaty of Amity, &c., between Great Britain and the United States, of 1794, an article (4) was inserted, admitting a doubt on this point, and providing for a joint survey of the Mississippi, and "if it should appear that the said river would not be intersected by such a line (due west from the north-west point of Lake of the Woods) the two parties will, thereupon, proceed, by amicable negotiation, to regulate the boundary line in that quarter, as well as all other points to be adjusted between the said parties according to justice and mutual convenience, and in conformity to the intent of the said treaty."

The question was not settled till 1818. By the treaty of that year, Great Britain surrendered to the United States all the country west of the Mississippi and south of the 49th parallel, "to the Stony Mountains." The line from Lake Superior to the most north western point of the Lake of the Woods and the 49th parallel have since formed the international boundary in that quarter. But the western boundary of the Province of Quebec, or, since its division into Upper and Lower Canada, of the Province of Upper Canada, was not affected by that surrender of territory.

The Treaty of 1783 had given up all the country east of the Mississippi and south of the present International Line. The question, then, seems to be reduced to a single point. Must we stop in our progress westward at the most north-western point of the Lake of the Woods, because that is the last point or distance that can be ascertained on the ground either under the Treaty of 1783, or the Royal Commission of 1786, or may we continue on our *due west* course, not to the Mississippi, but to the meridian of 95 degrees, which, according to one of the alternatives under the Act of 1794, takes the place of that river? In the first case, the western boundary line of Ontario will start from the "most north-western point of the Lake of the Woods," and run *northwards* (which, in the absence of any natural or geographical line must be interpreted to mean *north*), to the southern boundary of the territory granted to the Hudson Bay Company.

The "north-west angle" of the Lake of the Woods, as determined by the Commissioners appointed under the Convention of 1818, is not the most *north-western* point of that lake, according to Mr. Dawson and other later observers; but a official determination of the point under treaty with a foreign power will probably be deemed binding on all subordinate authorities. In the second case, the meridian of 95 degrees, or a due north line from the source of the Mississippi, will, according

to the most authentic maps, place our western boundary a few miles further west. It is to be observed that this last mentioned line was the boundary of the Province of Quebec, under the Act of 1774. Was the line *intended* in the Treaty of 1783, and in the Commission to the Governor, Sir Guy Carleton, in 1786. It is the western liminary line of the "Canada" of official designation and legal jurisdiction, and it remains unchanged to this day by any Act of Parliament or exercise of "the pleasure" of the Crown.

In conclusion, the undersigned would observe that the elaborate Report of the Commissioner of Crown Lands, in 1857; the instructions to Chief Justice Draper, the Agent of Canada in England; and the Minute of Council, approved by the Governor, Sir Edmund Head, show that the Government of Canada of that day contended for a still more western line. The approved "Minute" claims that "the western boundary of Canada extends to the Pacific Ocean." The "Canada" referred to in the Minute and in Mr. Cauchon's Report was, however, the *Canada* of the French, *Nouvelle France*; but the Canada whose boundaries we have now to determine is the *Canada* of the British, after the whole country east of the Mississippi had become British by the Treaty of 1763. It is the Canada whose limits were declared by Statute, by Proclamations, Commissions and other "acts of sovereign authority," between that date (1763) and the passing of the British North America Act of 1867.

Many additional facts might be adduced and statutes and documents cited, to support the position that the western boundary of Ontario is at least as far west as the most north-western point of the Lake of the Woods; but the *course* of its prolongation northwards is a question of legal inference. Its *distance* from the International boundary to the southern boundary of Rupert's Land will depend on the determination of a much more difficult question, viz.: Where is the southern boundary of Rupert's Land.

A satisfactory answer to this question will, probably, never be given; but before it can even be suggested, with any approach to historical or legal certainty, an examination of the maps, records and documents in the custody of the Hudson Bay Company will be necessary. As the Company have no longer an interest in maintaining the extravagant territorial claim put forward by them in recent times, such an examination would, no doubt, be readily permitted to any representative of the Province or the Dominion.

## 10.—MEMORANDUM.

BY WM. MCD. DAWSON, SUPERINTENDENT OF WOODS AND FORESTS, TORONTO, 1857.

The Commissioner of Crown Lands submits the following remarks on the North-West Territories of Canada, Hudson Bay, the Indian Territories and the Questions of Boundary and Jurisdiction connected therewith to accompany the other Documents :

Parliamentary Papers No. 547 of 1842. The question now under special consideration has more particular reference to the subject of the renewal of a lease held by the Hudson Bay Company for the "*Indian Territories*," which are not considered to be within the boundaries of Canada, though subject to Canadian jurisdiction.

Parliamentary Papers No. 542 of 1850. But the Hudson Bay Company's "Map and Statement of Rights," under their original charter, as submitted to the Imperial Government in 1850 by Sir J. H. Pelly, the Chairman of the Company, has also, however, to be considered in connection with it.

It becomes necessary therefore to expose the fallacies of the "Statement of Rights and Map" referred to, in order that the rights of the Province may not be misunderstood or the pretensions of the Company taken for granted.



The rights of the Hudson Bay Company and the effect of their operations upon the interests of Canada will best be considered under the following separate heads, viz.:

First.—With respect to their operations under the original charter on the territories affected thereby.

Second.—With respect to their operations within the boundaries of this Province.

Third.—With respect to their operations on what has been termed the Indian Territories, now under lease to them.

Fourth.—Arising out of the foregoing, the more important question of the boundaries of the above territorial divisions; and

Fifth.—With respect to jurisdiction as exercised and as sanctioned by law.

#### OPERATIONS OF THE COMPANY ON THEIR OWN TERRITORIES.

On the first head, as regards their operations under their charter on the territories which, if valid, it would cover, it is a matter of very secondary importance to Canada. The territories of the Hudson Bay Company, taken at the largest extent which any sound construction of their charter in connection with international rights would warrant, if not in point of distance so very remote, are nevertheless so situated, that it can only be when all the localities to the south and west, more available for purposes of agriculture and settlement, have been filled to overflowing, that settlers may be gradually forced into that vicinity from the superabundant population of more favored countries.

43 Geo. 3rd Cap. 138.

The most direct interest that Canada could have in the matter at the present moment, being responsible for the administration of justice there, would be rather of a moral and political than of an interested or commercial character. But as the necessities of the Company, in whose hands a monopoly of the trade has practically existed since the Treaty of Utrecht, together with the powers which they profess to derive from their charter, has induced them to establish a jurisdiction which, for the moment, seems to have been successful in maintaining tranquility and order, Canada has had no special reason to intervene, though if any complaints had been made on this score she would of course have felt called upon to exercise the powers vested in her by Imperial Statutes.

1 & 2 Geo. 4, Cap. 66.

It is not indeed to be denied that the freedom of the trade, consisting of furs and fisheries, would be of advantage to this country; but as this involves a question of the validity of the charter, and whether or not, if valid in respect of the territory really affected by it, it would also affect the open sea of the Bay, and seeing that the question is not now raised of any further legislation to give effect to the powers it professes to confer, the consideration of this point is immaterial at the present moment compared with the more important subjects that have to be treated of.

#### OPERATIONS OF THE COMPANY ON CANADIAN TERRITORIES.

The second point to be taken into consideration, and which is of a more important nature, is that which affects the operations of the Company within the boundaries of Canada, and on this head it must be admitted that they have had every facility they could possibly enjoy in their own territories, if such exist: whether on the coasts of Labrador, Lakes Huron, Superior or Winnipeg; whether on the Saguanay, the St. Maurice, the Ottawa, the Red River, the Assiniboine or the Saskatchewan, wherever they have operated within the boundaries of Canada, they have had precisely the same scope as within their own territories on the shores of Hudson Bay; not indeed but what if opposition had sprung up, the same facilities must necessarily have been afforded to any rival traders, had they not been effectually protected from such rivalry by their unlimited means, their extensive ramifications and complete

organization, with which no rival traders were able to compete, unless indeed to a very limited extent in the immediate vicinity of the settlements.

There are indeed parts of the Province so remote from established settlements and having so little direct intercourse with them, that in former years it might have been to some extent a tax upon the country to have established tribunals sufficient to enforce the laws over regions inhabited only, with one exception, by the servants of the Company and the Indians, though it may now be reasonably questioned whether corresponding benefits would not have accrued from such a course, while it must be admitted that the Company have, at all events, reaped a profit, taking together the costs they have been put to from the want of legal tribunals and the monopoly of the trade which the non-organization of such tribunals has practically been the means of enabling them to enjoy.

The exception referred to, where a considerable settlement exists, besides the employees of the Company and the Indians, is the Red River country.

But the time has passed when any considerations of expense or temporary inconvenience, even if proved to exist, can be allowed to stand in the way of opening up those territories, when indeed the necessity for expansion compels the Provincial Government to create further facilities for it; and as an additional reason why the Government should no longer permit the present state of things to continue, it must be added that rumors have been gaining ground of late years, with a force and clearness which almost compel conviction, that the jurisdiction actually exercised in those remote localities has been as contrary to the wishes of the people as it has been manifestly without the sanction of law, all which has created a necessity for early investigation and action on the part of the Canadian Government.

With this view, preparations were made in the Crown Lands Department last summer, for a preliminary survey from the head of Lake Superior westward, preparatory to the opening of free grant roads, which have been so successful in other parts of the country, for the purpose of forming the nucleus of a settlement which would gradually penetrate to the valley of the Red River and the prairies beyond. Besides which a first-class thoroughfare would be necessary to afford easier means of communication with the navigable waters flowing to the west, &c., to facilitate the administration of justice in the distant settlements and the necessary intercourse generally between those parts and the more populous districts of the country, and which would, at the same time, throw open to emigration, agriculture and commerce a far larger area, with, at least, an equal average mildness of climate, and susceptible of more rapid development (a known characteristic of prairie countries), than all other parts of the Province heretofore rendered available for settlement.

The question of the renewal of the license of exclusive trade on the Indian Territories does not, of course, affect the country above referred to, any more than it does the lands, whatever they be, for they have never been defined upon authority, which the original charter of the Hudson Bay Company may, upon investigation, be construed to cover.

#### OPERATIONS OF THE COMPANY ON THE INDIAN TERRITORIES.

The third point is, for the moment, of less importance than the last, though within the period of another such lease as the Act 1 and 2 Geo. 4, cap. 86, authorizes, it would be impossible to calculate the immense influence it must have upon the future of this country, and the British institutions which have taken root so deeply and thrive so nobly on its soil. The present operations of the Hudson Bay Company on these "Indian Territories" are conducted on the same principle precisely as within the boundaries of Canada, the jurisdiction they exercise having heretofore had the excuse of necessity, if not the sanction of law, as so far and it can be shown to have been exercised to the benefit of those countries, the Company might fairly claim indemnity for the consequences, should that become necessary, and there is no reason to doubt either the generosity or the justice of the Legislature if called upon to ratify such a measure.



It now becomes necessary, under the fourth head, to treat the questions of boundary arising out of the three foregoing; and these questions have heretofore, been so little understood, that it will be necessary to enter into the subject at some length.

The difficulty of describing definite boundaries in countries, which, at the time, were but very imperfectly or partially known, has always been a matter of serious embarrassment. In the present instance, however, the difficulties can only be in matters of detail, and it may be safely assumed that they will be still further lessened, by the fact, that wherever uncertainty can be supposed to prevail in any point of real importance, it can only be between the Province of Canada, on the one hand, and the "Indian Territories," on the other (not between Canada and the Territories of the Hudson Bay Company, unless at a point of comparatively little consequence); and it would be difficult to conceive that it could be adverse to the interests of the Crown or the community if the principal question of boundary were sunk altogether, and the whole of the "Indian Territories" incorporated with this Province.

#### BOUNDARY OF THE COMPANY'S TERRITORIES UNDER CHARTER OF 1670.

In the first place, then, with respect to the territory affected by the charter of the Hudson Bay Company, it may be admitted that it would not only be difficult, but absolutely impossible, to define it; it is, therefore, fortunate that its limited extent renders the question of little importance, further than that it becomes necessary to consider and rebut the very large pretensions of the Company.

The extent of the territory affected by the charter is subject to two distinct conditions:

First.—It is confined to all such territory as was then the property of the donor.

Second.—It is confined to all such unknown territories as by the discoveries of the Company, his subjects, might become his property.

These distinctions, though not directly expressed, are, nevertheless, conditions resulting from the circumstances and necessary to a proper understanding of the case.

With respect to the first, viz.: the territory which was the property of the donor, it is necessarily limited by usage and by common sense to what was known or discovered, for the unknown and undiscovered could not be his property, and might never become his property, that being dependant upon circumstances then in the future; is further limited by specific condition, expressed in the charter itself, to such portions of what was then known as did not belong to any other Christian Prince, which condition, it must be admitted, was an acknowledgment on the part of the donor, that some part of the territory he was describing was not his, and of doubt as to what did or did not belong to him.

With respect to the extent of territory that *might have been* affected by the second condition above stated (that is as regards exclusive trade, the grant of soil being less extensive and more ambiguous) it has no particular limit, for it embraces all countries which could be reached either by "water or land" through Hudson Straits, and to limit or extend it merely to the sources of rivers discharging into Hudson Bay, would be a construction which the charter will in no sense admit of. But while it extends to all unknown countries, or infidel nations, which the Company could reach through Hudson Straits or Bay, it is at the same time inferentially and *necessarily* restricted from extending to any of these unknown parts which might be first discovered and possessed by the subjects of any other Christian Prince or State. This is not, indeed, expressed in the charter in relation to undiscovered territories, but it is emphatically so as regards the then state of the rights and possessions of christian powers. While the King, therefore, is so careful, at least in the wording of the document, not to infringe upon the rights of others *already acquired*, it can scarcely be supposed that he meant to infringe upon the rights of others *to acquire* what then belonged to none. The inference is altogether against the supposition that King Charles meant by his charter to deny the right of any other civilized nation to make

further discoveries and appropriate the countries discovered, and, even if he had so intended it, he had not the power to alter the law of nations in this respect. Besides, the charter is one of discovery as well as trade, &c.; the advantages granted to the "adventurers" are incidental and subordinate to that greater object, but there could be no discovery on their part wherever they were preceded by prior discovery and possession on the part of the subjects of any other Christian Prince. The right of discovery is and was so well established, and wherever considered of any importance, has been so jealously watched that volumes of diplomatic controversy have been written on single cases of dispute, and the King of Great Britain could not, by his charter, annul the recognized law of nations, or limit in any degree the right of other states to discover and possess countries then unknown. It may be even considered extravagant to affirm that he could convey a right of property to territories *not then* but which might *afterwards* become his or his successors' by the prior discovery and possession of the Company themselves, his subjects: were it necessary to dwell upon this point it could easily be shown that most of the territories now claimed under the charter, which were not discovered at that date, the Company were not afterwards the first, nor were any other British subjects the discoverers of; that, in fact, except the Coppermine River, the Company never discovered anything or penetrated beyond the *coasts and confines* of the Bay (to which perhaps they at that time justly considered their rights restricted) for upwards of a hundred years after the date of their charter, and that when they did so penetrate, the only *discovery* they made was that the whole country in the interior had been long in the peaceful possession of the subjects of another Christian Prince.

But the position, as regards discovery after the date of the charter, it is unnecessary to dwell upon, particularly as an adverse title can be proved prior to the date of the charter, and that, too, sanctioned by treaty.

The early discovery and occupation of the country in and about Hudson Bay are, as in many other cases, shrouded in a good deal of obscurity. The British claim

as the first discoverers of the whole coast of this part of North America, 1497. in the persons of John and Sebastian Cabot, about the year 1497, but it is contended, on the other hand, that their discoveries did not extend to the north of Newfoundland, which still retains the name they gave it and, which they supposed to form part of the mainland. It is *said*, indeed, that the Cabots penetrated to a very high latitude far to the north of the straits now bearing the name of Hudson; but it must be remarked that there appear to be no authentic records of the two voyages of the Cabots, their journals or observations. There appears to be only *hearsay* evidence of what they did, or where they went, told afterwards at second and to third parties. The voyages of the Cabots, therefore, although they are matters of history not admitting of any reasonable doubt in a general way, as to their having reached the coast of America, lose much of their force as the bases of specific territorial claims, from the want of any record of their proceedings. Did they ever and? If so, where? What observations did they make? Did they take formal possession? &c.

The French claim through fishermen of Brittany who established 1504. fisheries on the coast as early as 1504, and through a map published by 1506. Jean Deny, of Honfleur, in 1506. The map would be valuable if any authentic copy of it be extant. There does not appear to be any such record of the operations of the Breton fishermen as would fix precisely the spot where their trade was carried on, though a British geographical Ogilby, London, 1671. work, published in 1671, with a map attached, fixes it at Hudson Straits, naming the country after them, on the south side of the Straits and within the Bay. The next navigator through whom the French claim is maintained is John Verezzani, who visited the country by order of Francis the First of France, in 1523-4. This is the first voyage in behalf of either France or England, of which any authentic and circumstantial record exists, as written by the navigator himself, who gave the coun-



1534. try the name of New France. In 1534, Jacques Cartier's discoveries commenced, and these are so well known that it is unnecessary to say more of them.

Thus, then, it appears that the Cabot's voyages, unsustained by any authentic record, affording no means of basing even a probable surmise as to whether so much as a landing was effected, formal possession taken, or any act done to constitute the assumption of sovereignty or territorial dominion, comprise the only grounds on which England can base a claim to the country north of Newfoundland, prior to the voyage of Jacques Cartier. Apart, therefore, from the question of "*beneficial interests*" (to use the expression of a British diplomatist) which were acquired by France, commencing with the discoveries of Cartier, the preponderance of *admissible* evidence is altogether in favor of French discovery of that part of the continent between Newfoundland and Hudson Bay. But, even if the question rested altogether between the unauthenticated discoveries of the Cabots and the commencement of settlement by Cartier, it would not be inappropriate to assume the British view of a similar question as maintained in the Oregon dispute, in the following words:

"In the next place, it is a circumstance not to be lost sight of, that it (the discovery by Gray) was not for several years followed up by any act which could give it value in a national point of view; *it was not in truth made known to the world either by the discoverer himself or by his Government.*"

The next English attempts at discovery commenced in 1553, when Willoughby penetrated to the north of Hudson Bay, which, however, he did not discover or enter. This was nineteen years after Jacques Cartier's first voyage, and was followed by various other attempts at finding a north-west passage, all apparently directed to the north of Hudson Straits until 1610, the period of

Hudson's voyage, in which he perished after wintering in the bay which bears his name; but by this time, it must be observed that Canada was colonized by the French.

In 1540, De Roberval was made Viceroy of Canada, the description of which as given in his Commission included Hudson Bay, though not then of course known by that name.

1598. L'Escarbot, Ed. 1611, De la Roche's appointment in 1598, as follows:  
Vol. 1, p. 31,

"Ainsi notre Nouvelle France a pour limites du côté d'ouest les terres jusqu'à la mer dite Pacifique au deçà du tropique du cancer; au midi les isles de la mer Atlantique du côté de Cuba et l'Isle Espagnole au levant la mer du nord, qui baigne la Nouvelle France; et au Septentrion cette terre, qui est dite inconnue, vers la mer glacée jusqu'au Pole Arctique.\*"

Notwithstanding failures and difficulties, France continued the effort to colonize Canada, and in 1598 De la Roche was appointed Governor of the whole of Canada as above described. In 1603 or 1604 the first exclusive charter was granted for the fur trade of Canada up to the 54th degree of north latitude. In 1608 Champlain founded the City of Quebec, and in 1613 he accompanied his Indian allies, to the number of between two or three thousand, up the Ottawa and by Lake Nipissing and the French River, to war with a hostile nation at Sault Ste. Marie. It must now be observed that the great incentive to the colonization of Canada was the enormous profits of the fur trade, without which it is scarcely likely that such persevering efforts would have been made for that purpose while so many countries with more genial climates remained in a manner unappropriated.

\* Therefore, New France has for Boundaries on the west the Pacific Ocean within the Tropic of Cancer; on the south the islands of the Atlantic towards Cuba and the Spanish Island or Hispaniola; on the east the Northern Sea which washes its shores, embracing on the north the lands called unknown, towards the Frozen Sea, up to the Arctic Pole.

Tadousac, at the mouth of the Sagueney River, was the first important post established by the French on the St. Lawrence; it was the entrepot of the fur trade before Quebec was founded, and continued to be so afterwards. This will not be deemed extraordinary when it is considered that the Saugenay River afforded the best means of access into the interior, and was the best inland route, in fact, is the best canoe route yet to the great bay now bearing the name of Hudson. There is indeed no authentic record of any of the French having made an overland journey to the Bay at so early a period, but when it is considered at what an early date the *Coureur de Bois* traversed the whole country in search of peltries, how readily they amalgamated with the Indians, who in that locality were in friendly alliance with them, and when it is also considered what extraordinary journeys the Indians undertook, as instanced by the war carried into the enemy's country at the Sault Ste. Marie, already referred to, the presumption is that the fur traders of Tadousac not only enjoyed the trade of the great Bay, but must also have penetrated very far in that direction, if not to the Bay itself, a journey at the most of less distance and not greater difficulty than that which Champlain successfully accomplished with an army, while it had the strong incentive of profit to stimulate it. It is not necessary, however, to prove that every corner of the country known to the world as New France or Canada had been first visited by the actual possessors of the region so known.

However strong the probabilities, therefore, of the *Coureur des Bois* having been in communication with the great northern bay before the visit of Hudson, in 1610-1612. 1610, or of Button, who succeeded him, in 1612, it is not necessary to base any argument thereon; nor is it necessary to dwell on the reputed <sup>1545.</sup> voyage of Jean Alphonse, of Saintonge, in 1545, which, although quoted by French historians, does not appear to be sufficiently authenticated. For, granting that the rights accruing from discovery resulted from the voyages of Hudson and Button, these discoveries were practically abandoned, in fact, were never dreamt of being followed up by way of occupation, the finding of a north-west passage having been their sole object; but, waiving even this point, it will be found that the rights of France were made good by international treaty long before the charter of Charles the Second was granted.

It will be seen from L'Escarbot's description, and those contained in the Commissions of the Governors already referred to, that France claimed the whole country extending to the north of Hudson Bay, her title resting, in the first instance, upon the discoveries already mentioned, of which those of Verezzani, Cartier and Champlain are of unquestioned authenticity, to which they had added, when L'Escarbot wrote in, 1611, the title resulting from actual possession in the shape of permanent settlement. England, on the other hand, claiming under Cabot's discovery, denied the right of France generally to the whole and practically to the more southerly parts where she endeavored to plant settlements of her own, in which she was successful at a period somewhat later than the French. The fact is, each was trying to grasp more than they could take actual possession of; and if mere discovery of parts of a continent without actual possession or settlement were made the basis of permanent rights, neither of the contending parties would, perhaps, have had any right at all. Gradually, the state of the actual possessions of the two powers settled down into a sort of intelligible shape, though without any very distinct boundaries, the most northerly of the English possessions being known as New England, and *all* the country to the north thereof being known as New France or Canada, where the French *only* were in possession, there being no possession or settlement of any kind to the north of them. Still, had England colonized Hudson Bay at that period and been successful in keeping actual possession of it, she would just have had the same right to do so that she had to colonize New England. That England persevered with extraordinary energy in trying to find a north-west passage there can be no doubt, nor does it appear that France, though publicly claiming the country, made any objection, but neither country made the most distant attempt at settlement or actual occupation of those remote and inhospitable regions at that period.



1615. In 1615 another expedition was made into Hudson Bay, in  
 1627. search of a north-west passage by Baffin and Bylot. In 1627, the  
 the Quebec Fur Company was formed under the auspices of Cardinal  
 Richelieu and an exclusive charter granted to them for the whole of New France  
 or Canada, described as extending to the Arctic Circle. In 1629, Que-  
 1629. bec was taken by the British, as were also most of the principal towns  
 founded by the French in Acadia and Nurembega (now Nova Scotia and  
 New Brunswick), which were then Provinces of New France, the two nations being  
 then at war. In 1631 Fox and James, on two different expeditions, pro-  
 1631. secuted a further search for a north-west passage in Hudson Bay, and  
 from the latter of these navigators the southerly part of the Bay,  
 takes its name.

At this period the authenticated voyages of the English into Hudson Bay were  
 Hudson in 1610, Button in 1612, Bylot and Baffin in 1615, and Fox and James in  
 1631; the numerous other expeditions having been all apparently directed to the  
 north of Hudson Straits. At the same time, the extent of New France or Canada, as  
 claimed by the French, was publicly known throughout the civilized nations of  
 Europe. It is not necessary to say that that claim was admitted by Great Britain;  
 it is sufficient that it was known. British authorities even of a later period, it must  
 be observed, have contended that the French were intruders in America altogether  
 in violation of the title accrued through the discoveries of the Cabots, and had no  
 right whatever to any part of it *until acquired by treaty*. It therefore becomes im-  
 material whether the claims of the French were disputed or not so far as they were  
 afterwards confirmed or a title created by Treaty.

1632. In 1632, peace was concluded, and by the Treaty of St. Germain on  
 Laye, Canada or New France was relinquished to the French without  
 any particular designation of its limits, and the British forces were to be withdrawn  
 from the places they had taken, which, being the most important, including the seat  
 of government, might almost be said to have amounted to the conquest of the whole  
 country.

Admitting, then, that but a disputed title of discovery had previously existed on  
 either part, nay, admitting more, that the right vested by prior discovery was in  
 England, this treaty sets the matter at rest as regards all that was at that time called  
 by the name of New France, or Canada. There is, indeed, no getting behind this treaty,  
 of which the charter afterwards granted by Charles the Second was, in fact, but for  
 the saving clause it contains, a violation, and Canada might well be contented to rest  
 her case here as against a charter which, referring to a country previously guar-  
 anteed by the treaty to a foreign power is expressly conditioned (as a charter of dis-  
 covery) not to interfere with what belonged to that other power. If, as is asserted  
 by some English writers, France had no rights in America but such as she acquired  
 by Treaty, what, it may be asked, were the limits of the territory she acquired by  
 the Treaty of St. Germain en Laye, if not all that she claimed under the name of  
 New France? It must be observed, too, that Champlain, the Viceroy of Canada, was  
 made prisoner when Quebec was taken in 1629, and carried to England, where he  
 remained for some time, and that the very year in which the treaty was entered  
 into he published a work containing a map of New France, by which Hudson Bay  
 was included in the country so called. Can it then for a moment be supposed, with  
 Champlain, the Viceroy of New France, a prisoner in their hands, and their flag  
 floating in triumph from the battlements of its capital, that the British Government  
 and the diplomatists who negotiated the treaty were ignorant of the meaning  
 attached to the terms "Canada" or "New France," or could attach any other meaning  
 to those terms than that which Champlain's published maps of a previous date indi-  
 cated, and with which the descriptions of other French writers whose works were  
 known throughout Europe coincided? Can it be supposed that in the negotiations  
 preceding the treaty, Champlain's views of the extent or boundaries of his Vice-  
 royalty were wholly unknown, or that the British diplomatists meant something  
 less by the appellation than what was known to be understood by France? If, in-

deed, something less than the known extent of country called New France had been agreed upon, some explanation would undoubtedly have been contained in the treaty, or, if there had been any misunderstanding on the subject, the map which issued the same year, in Champlain's work of 1632, would at once have been made a cause of remonstrance, for coming from the Chief Officer of the colony, who was re-appointed to or continued in his office after the peace, and published in Paris under the auspices of the King, it could not be otherwise looked upon than as an official declaration of the sense in which France regarded the treaty.

Even, then, if the rights of France were wholly dependant upon international treaties, her right became as good by the Treaty of St. Germain's en Laye to the shores of Hudson Bay as to the shores of the St. Lawrence. If she had rights before, the treaty confirmed them, and if she had no rights before, the treaty created them; and, in either case, the effect was as great in the one locality as the other. Every further step, however, in the history of the country will only tend to show that even if there had been no such treaty as that of St. Germain's en Laye the charter could not be sustained in opposition to the rights of France.

1632. The provisions of the Treaty of 1632, seem to have been respected

1668. for a period of 36 years, when, in 1668, the next English expedition entered the Bay, which was the first *trading voyage* ever made by British subjects to the Bay, and which resulted in the formation of the Hudson Bay Company and the grant of the charter two years after. In saying that this was the first purely commercial enterprise of the British in Hudson Bay, it is not meant to be implied that no trade was had with the Indians by those engaged on the former expeditions, but that such enterprises were undertaken with the definite object of reaching the Pacific, and without the least idea of any practical occupation of, or trade with the country.

The British having ceased any attempt upon Hudson Bay from the time of Fox and James' voyages and the Treaty of St. Germain's en Laye, for a period of 36 years, it now remains to be seen what the character of this their next attempt was, and what had been the circumstance of the country in the interim.

That the name of Canada or New France continued to attach to the whole country during that period is indisputable; the French published maps of these times, leave no doubt upon the subject, and when we find the French not only designating the country by these names in their maps published by royal authority, but also entering upon the practical occupation of the since disputed parts of the country so designated, the carrying on of the trade with it both by sea and land, and the establishing of missions, all within the period intervening between the Treaty of St. Germain's en Laye and the granting of the charter, or the voyage which preceded the charter, and all without interference on the part of Great Britain, we must conclude that the rights of the French were incontestable, and that if ever an adverse claim had been preferred it was considered to have been abrogated by the treaty.

1656. In 1656 the first exclusively commercial sea voyage was made into Hudson Bay by Jean Bourdon, who found the trade in furs so profitable that others immediately followed. The first missionary establishment

1663. was made there in 1663 by La Couture, who went overland by direction of D'Avaugour, Governor of Canada, who had been twice solicited by

deputations of Indians from the Bay to send them missionaries, and now the French being fully established in the trade and in the occupation of the country both by sea and land, of the coast and of the interior, the English "Adventurers" first appear upon the scene, in a business way, under the countenance of two Canadians, DeGrozelier and Radisson, who having been already engaged in the trade of the Bay, and having failed in procuring certain privileges they desired from their own

1668. Government, went to England and induced some Englishmen to join them in a trading voyage in 1668, which was so successful that, as already stated, it resulted in the formation of a Company and the grant, in 1670,

1670. of one of those extraordinary charters which were so much in vogue in those days that the whole of the Continent of America north of the Gulf



of Mexico, known and unknown, may be said to have been covered by them, and some of it doubly so if the vague and ambiguous descriptions, of which this was the most vague, could be said to mean anything.

This was the origin of the Hudson Bay Company, and they immediately commenced to build forts and establish themselves in the trade, but no sooner was this known in France than orders were given to expel them. Accordingly, a desultory warfare was kept up for a number of years between the Canadian traders and the Company, in which the latter were nearly expelled, but again recovered themselves and strengthened their position, when it became necessary to take more effective means for their expulsion. Troops were accordingly dispatched from Quebec overland for that purpose under the Chevalier De Troyes, who commenced his work very effectually by taking the principal forts of the Company. It must be

1686. observed that this was in 1686, in time of peace between Great Britain and France, and yet these proceedings were not made a cause of war, which in itself would strongly imply an admitted right on the part of France to extirpate the Company as trespassers upon her territory.

War having afterwards broken out, the forts on Hudson Bay were successively taken and retaken, 'till the peace of Ryswick, in 1697, put a stop to hostilities, at which time the British appear to have been possessed of Fort Albany *only*, the Canadians having possession of all the other establishments and the trade of the Bay.

Treaty of Ryswick, 7th and 8th clauses. By the Treaty of Ryswick, Great Britain and France were respectively to deliver up to each other generally whatever possessions either held before the outbreak of the war, and it was specially provided that this should be applicable to the places in Hudson Bay taken by the French

during the peace which preceded the war, which, though retaken by the British during the war, were to be given up to the French. There could scarcely be a stronger acknowledgment of the right of France to expel the Company as trespassers upon her soil, for it is impossible to construe the treaty in this particular otherwise than as a justification of the act.

Moreover, Commissioners were to be appointed, in pursuance of the treaty, to determine the rights and pretensions which either nation had to the places in Hudson Bay. Had these Commissioners ever met, of which there appears to be no record, there might have been a decision that would have set the question at rest as to which were "*rights*" and which were "*pretensions*." The Commissioners must, however, have been bound by the text of the treaty wherever it was explicit. They *might* have decided that France had a right to the whole, but they could *not* have decided that Great Britain had a right to the whole. They would have been compelled to make over to France all the places she took during the peace which preceded the war, for in that the treaty left them no discretion. The following are the words of the treaty: "But the possession of those places which were taken by the French during the peace that preceded this present war, and were retaken by the English during the war, shall be left to the French by virtue of the foregoing article." Thus the Treaty of Ryswick recognised and confirmed the right of France to certain places in Hudson Bay, distinctly and definitely, but it recognized no right at all on the part of Great Britain; it merely provided a tribunal to try whether she had any or not.

So strongly has the Treaty of Ryswick been interpreted in favor of France in this particular that some historians merely state the fact, that by it she retained all Hudson Bay and the places of which she was in possession at the beginning of the war.

The Commissioners having apparently never met to try the question of right, things remained *in statu quo*, and the most reliable accounts show that the Hudson

1713. Bay Company retained possession of Fort Albany *only* from that time up to the Treaty of Utrecht, in 1713. Now, whatever the Commissioners might have done, had they ever passed judgment on the cause the treaty

provided they should try, they could not have given Fort Albany to the British, for it was one of the places taken by the French during the preceding peace and not taken by the British during the war, and therefore adjudged in direct terms of the treaty itself to belong to France.

Thus, then, it will be seen that the only possession held by the Hudson Bay Company during the sixteen years that intervened between the Treaty of Ryawick and the Treaty of Utrecht was one to which they had no right, and which the obligations of the treaty required should be given up to France.

Here, therefore, for the second time, an international treaty interposes a barrier against the pretensions of the Company.

1713.

By the Treaty of Utrecht in 1713, the whole of Hudson Bay was ceded to Great Britain without any distinct definition of boundaries, for the determining of which Commissioners were to be appointed. No official statement of the action of such Commissioners is at present available for reference, but it is stated that no such action threw any additional light upon the

Treaty of Utrecht.

subject. Indeed, no such Commissions ever have done much to determined boundaries in unexplored countries, as witness, for instance, the dispute so long pending on what was called the north eastern boundary question between Great Britain and the United States, which was finally compromised by the Treaty of Washington, concluded by Lord Ashburton; and again, the difficulties arising out of the same ambiguous description, and which so many Commissions endeavored in vain to settle between the Provinces of Canada and New Brunswick.

There is no denying the fact that the ancient boundaries of Canada or New France were circumscribed by the Treaty of Utrecht, and it is difficult to determine precisely the new boundaries assigned to it. The general interpretation adopted by the British geographers, as the country gradually became better known from that time up to the final cession of Canada, was that the boundary ran along the high lands separating the waters that discharge into the St. Lawrence from those that discharge into Hudson Bay to the sources of Nipigon River, and thence along the northerly division of the same range of high lands dividing the waters flowing direct to Hudson Bay from those flowing into Lake Winnipeg and crossing the Nelson, or rather (as it was then known) the Bourbon River, about midway between the said lake and bay, thence passing to the west and north by the sources of Churchill River, i. e., no westerly boundary being anywhere assigned to Canada. It may, indeed, be held doubtful whether the terms in which Hudson Bay was ceded could possibly be interpreted to mean more than the Bay and its immediate environs, but whatever the legitimate interpretation of the treaty, the actual *acceptation* of it gave to France at least all to the south of the dividing high lands above described, for she remained in undisputed possession thereof until the final cession of Canada, in 1763; while, on the other hand, the acceptance of it on the part of Great Britain, as proved by the same test of occupation, confined her at least to the north of the said high lands, if not to the very shore of the Bay, beyond which her actual possession never extended.

It must here be observed, however, that the Treaty of Utrecht conferred nothing upon the *Hudson Bay Company*. It gave them nothing that was not theirs at the Treaty of Ryswick, and the Treaty of Ryswick gave them nothing that was not theirs before. The charter obtained from King Charles the Second, may have granted 1670. all that was his (if anything) to grant in 1670, but it would have required a new charter to have granted what France ceded to Great 1713. Britain forty-three years afterwards. No doubt the Treaty of Utrecht had this important bearing upon the country that, although it conferred territorial rights upon them, the territory it conferred on Great Britain was then accessible to British subjects by any other route than through the Bay and Straits Hudson, over which (if over anything) the Company's charter gave exclusive control, and over which, whether rightfully or wrongfully, they have exercised control.



Matters continued in this state as regards the territorial rights of Great Britain and France for 50 years more, when Canada was ceded to Great Britain by the Treaty of Paris in 1763. During this period the Hudson Bay Company occupied the posts on the coasts of the Bay, and these only, having made no attempt to penetrate into the interior or occupy even what the *British geographers* of the time construed the Treaty of Utrecht as conferring, not upon the Company, but upon Great Britain; while, on the other hand, the French had covered that part of New France which still remained to them (according to the British authorities), with posts or forts from the Lake of the Woods to the lower end of Lake Winnipeg, and remained in peaceable possession thereof, and in the most active prosecution of the trade, until the whole country was given up to the British by the Peace of Paris, in 1763; by which, however, nothing was conferred upon the Hudson Bay Company any more than there had been by the Treaty of Utrecht, the rights acquired by these treaties being simply in common with other British subjects.

For a few years, about the time of the transfer of Canada from French to British dominion, the trade of the western territories languished, from a very natural want of confidence on the part of the Canadians by whom it had, up to that time, been carried on, and who now owed a new allegiance and had to seek a new market for the produce of their industry; but a fresh impulse was soon given to it, first by separate individuals, then by small companies, and finally, by the great North-West Company of Montreal, who not only spread their operations over all the territories formerly possessed by the French, but explored new countries to the north and west while the Hudson's Bay Company had not yet made a single establishment beyond the immediate confines of the sea coast.

The temporary depression of the fur trade at the period of the transfer of Canada to British dominion was of course advantageous to the Hudson Bay Company, for the Indians inhabiting those parts of Canada where the French posts were established around Lake Winnipeg and its tributaries, would naturally seek a market in Hudson Bay during the comparative cessation of demand at the establishments in their midst. But when confidence was restored, and a new impulse was given to the trade in the north-west of Canada, the supply was again cut off from Hudson Bay, and now the Company for the first time entered into competition with the Canadian traders in the interior, where their first establishment was made, in 1774. And why, it may be asked, did not the Hudson Bay Company oppose the French Canadians in the interior a few years earlier, as well as they opposed them (principally the same people) now that they had become British subjects? The answer is very simple. During French dominion they could not do it because the country belonged to France, but by the cession of the country to Great Britain, the Company had acquired the same right as any other British subjects to trade in it, and they availed themselves of that right accordingly.

From this period an active competition was carried on between these companies, but the Canadian North West Company were everywhere in advance of their rivals; they were the first to spread themselves, beyond the limits of the French, over the prairies of the Saskatchewan; they were the first to discover the great river of the north, now bearing the name of McKenzie, and pursue its course to its discharge into the Frozen Ocean. They were the first to penetrate the passes of the northern Cordilleras and plant their posts on the shores of the Pacific; and with such indomitable energy did they carry on their business that at the period of Lord Selkirk's interference, they had upwards of 300 Canadians, "*Voyageurs*," employed in carrying on their trade to the west of the Rocky Mountains.

It would be a useless task now to enter into a detail of the attempt made by the Earl of Selkirk, as a partner of the Hudson Bay Company, to ruin their opponents. It is only necessary to refer to it here as the first endeavor made to exercise the privileges contended for under the charter over those territories which had not been acquired by Great Britain till the conquest or cession of Canada. Lord Selkirk having become the principal partner and acquired a predominant influence in the

affairs of the Hudson Bay Company, it was determined to assert the assumed privileges of the Company to an extent never before attempted, and for this purpose a grant of the country on the Red River was made to His Lordship, who commenced in 1811-12 to plant a colony there.\* A Governor was appointed, the colonists and the servants of the Company were armed and drilled, and in 1814 the claims of the Company to soil, jurisdiction and exclusive trade were openly asserted, and for the first time attempted to be enforced by the actual expulsion of the North-West Company, several of whose forts were surprised and taken, their people being made prisoners, their goods seized and the channel of their trade obstructed by the interception of their supplies. Overawed somewhat for the moment by this bold assumption of authority, the Canadian Company appear to have avoided the contest, but when forced into it they proved the stronger; the Governor was killed in leading an attack upon a party of the North-West Company who turned and gave battle, and the colony was dispersed. This final catastrophe occurred in the spring of 1816, while in the meantime Lord Selkirk was organizing a more formidable force than had hitherto taken the field. Having procured a commission of the peace from the Government of Canada he engaged a large force of the disbanded DeMeuron soldiers, equipped them in military style, procured arms, ammunition, artillery even, and started for the interior.

It must be allowed that it was a somewhat anomalous course for the Government of Canada to have pursued to permit such a force to be organized; but when it is considered that great ignorance prevailed as to the state of those remote localities, that it was known that there had been disturbances and bloodshed the previous year, when also Lord Selkirk's position is considered, and that he went as a pacificator professedly to maintain peace, it may not be deemed so extraordinary that so much confidence should have been placed in him, for he was even granted a sergeant's guard of regular troops. It is not the object here, however, to enter into a discussion of the unfortunate occurrences of that period, or the particular action of the Provincial Government, and the circumstances are only referred to, to show that Canada actually exercised the jurisdiction, that Lord Selkirk's destination was the Red River colony, and that he deemed it necessary to fortify himself doubly with commissions as a Canadian Magistrate, first for Canadian territory, and second (under 43 Geo. 3rd) for the "Indian Territories," so that those who resisted his authority on the ground that they were in Canada, he could judge under the one commission, and those who insisted on the ground that they were in the Indian Territories, he could judge under the other, while the judicial and governmental attributes claimed for the Company could have served as a third basis of operations; and thus, with the actual force at his disposal, there was a pretty fair prospect of the Hudson Bay Company being made the absolute masters of the North-West country.

At the Sault St. Marie, however, Lord Selkirk met intelligence of the death of Governor Semple and the dispersion of his colony; nevertheless, he still proceeded with his force as far as Fort William, on Lake Superior, where he arrived about the 11th August, 1816, and soon after arrested the partners of the North-West Company, who were there at the time, and took possession of the whole establishment including the merchandise and stores of the Company. The course pursued on this occasion, as appears by documents published at the time, shows the character of the pretensions set up at that period—pretensions which were not till then presumed upon.

\* "Who have been the aggressors in their different quarrels, I am not able to determine; however, previous to 1811, at which time Lord Selkirk became connected with the Company, and sent settlers from Europe to that country, no great differences existed between the servants of that Company and the fur traders of Canada. There might be difficulties between different posts, but seldom attended with serious consequences." Despatch of Lieutenant Governor Gore to Earl Bathurst, 9th September, 1816.



It will be observed that Fort William was the principal depot of the Canadian merchants, through which all their supplies for and peltries from the North-West had to pass. By seizing on this point, therefore, Lord Selkirk had possession of the key of their whole trade, and was enabled to permit or refuse the transit of their goods, as he saw fit. For whatever purpose, therefore, he obtained his two commissions of the peace in Canada the expedition simply resolved itself into a continuation of the attempt to destroy the North-West Company of Canada, the rivals in trade of the Hudson Bay Company, for, however desirable it might be to arrest and bring to trial all parties implicated on either side in the death of Governor Semple, there could be no excuse for seizing the persons of those gentlemen who were known not to have been at the time within hundreds of miles of the scene of that catastrophe, merely because they were partners in the North-West Company, nor, even if there were cause for their arrest, did that justify the taking possession of their property without the sanction or the form of law.\*

The object of entering upon this brief record is, to point out that all this occurred at Fort William, on the shores of Lake Superior, within what the Hudson Bay Company, by their map and statement of "rights," now admit to be within the boundaries of Canada. And thus it will be seen that, while the pretension of extending the privileges of the charter beyond the "coasts and confines" of the Bay to the western territories of Canada, was a mere invention of that period, to further their own ends and to destroy the rival company of Canada, they were as ready to employ force at Fort William as in the Valley of the Red River.

In further proof that the transactions at Fort William were openly done in violation of Canadian law and in defiance of Canadian authority, it is only necessary to add that when Lord Selkirk's proceedings became known, warrants were issued for his apprehension and a party of constables sent to arrest him, and that refusing obedience to the laws of this country and presuming upon their force for the moment at his command in that remote locality (remote then as regards the time it took to reach it, though a few doors to day) he caused the constables to be taken prisoners themselves, and treated the Deputy Sheriff of the western district, who afterwards made the attempt in like manner.

Deputy Sheriff obtained verdict for £500 damages.

This war between the Companies, though injurious to both, failed to exterminate either, and the final result was a compromise by which they entered into partnership; and thus the trade has been carried on since, under the name indeed of the Hudson Bay Company, but *expressly* in conjunction with the North-West Company of Canada, so that Canada can at no time be said to have been out of possession of her western territories within the limits occupied by the French at the time of the conquest, nor out of possession of the "Indian Territories beyond, which, after the conquest, were first discovered by the Canadian traders, and for which the license of exclusive trade was granted to the partners of the North-West Company of Canada as such, in conjunction with the Hudson Bay Company.

It is true that after the amalgamation of the Companies and the 1821. Because of exclusive trade granted in 1821, competition became illegal in the "Indian Territories," beyond the boundaries of Canada, as indeed had always proved *impracticable* on the part of minor traders either within or beyond the remote parts of the Province, small traders being altogether unable to cope with the two great Companies. It is true also that after they, the two great Companies had been for some time united, and when by the policy pursued by them the trade

\* "From these documents it appears, that the Earl of Selkirk, acting in his own cause aided by an armed force, has not only made the partners of the North-West Company prisoners but has also seized their papers and property."

ad ceased to be beneficial to, and had been lost sight of in Canada, an arrangement was effected between the two sections of the united Company by which the name of North-West Company was dropped entirely, the lease relinquished, and a new one obtained in which the name of the Hudson Bay Company alone appeared; but it must be observed that this new arrangement as accepted and entered into by the British Government by consent of the partners representing the original Canadian Company, for although this lease or license only affects the Indian Territories beyond the actual boundaries of Canada, it can scarcely be supposed that the government would have agreed to give it, had Canadian traders still remained in the field. The policy of the Companies, when joined, has however been so far successful that they have managed heretofore to secure themselves against opposition, many no doubt being imposed upon by the pretentious but erroneous construction put upon their charter, and the public in general kept in the dark respecting a trade which, though partly carried on in the very centre of Canada and within range of steam navigation, is so managed as to pass by a circuitous route, by means of the primitive canoe and over portages on men's backs, away hundreds of miles into the interior and round by Hudson Bay.

But the time has come when Canada must assert her rights, not only from that necessity for expansion which her growing population and trade require, but also because if she does not now begin to provide for the future by opening up her remote territories to colonization, and securing the loyalty and attachment of the people by tending to them the rights and privileges of her laws and institutions, there is a moral certainty that a power far more formidable than the Hudson Bay Company will in a very short period acquire the actual possession of those countries.

This brief chronological sketch of the history of the Company and of the circumstances connected therewith, must sufficiently show that they have acquired no territorial grant whatever under either of the two conditions stated to which their charter was subject: first, as regards the countries then known upon the "coasts and confines" of Hudson Bay, because they were already in possession of the objects of another Christian Prince, and were therefore excluded from the grant in virtue of the charter itself; and second, as regards discoveries, because when they first penetrated into the interior, 104 years after the date of their charter,

1774. they found the country and a long established trade in the hands of others, —unless indeed as regards some discoveries to the north which are of no special importance to Canada, such as the Copper Mine River, discovered by Hearne 1772. under the auspices of the Company.

Under the first head, the most sanguine advocate of the Company, upon a full investigation of all the circumstances, could only urge on their behalf a claim to certain points or stations on the sea coasts of the Bay, and even to these a doubtful disputed title.

The high legal authorities that may be quoted in favor of the Parliamentary Paper, claims of the Company cannot be held as of weight against the conclusions inevitably resulting from a fuller investigation of the subject, inasmuch as they are merely opinions upon the cases

*vitel*. The latest opinion given upon the subject is that of Sir John Jervis and John Romilly in their letter to Earl Grey, of January, 1850, in which they give their opinion, "That the rights claimed by the Company do properly belong to them." Before arriving at this conclusion, however, these learned gentlemen were careful to specify precisely what papers they had then under consideration, to which alone they refer as the basis of their opinion. These papers were simply "Statement of Rights and the Map" submitted by the Chairman of the Company, J. H. Pelly.

This opinion, therefore, can only be taken as affirmative of the power of the King to grant such rights and privileges as the charter specifies, and that the charter does cover all the territory claimed, but the question of whether that territory was granted to the King to grant was not before them. With respect to the territory and the wording of the charter would cover, it would be difficult to say what it



would not cover; and with respect to the validity of the grant of such powers, it is to be remarked that very high authorities have given a directly opposite opinion; and it may be asked why, if the charter was valid, did the Company

1690. procure an Act of Parliament to confirm it in 1690, and why, when that Act expired, which was limited to seven years, did they again ask for an

Act to continue it? It is worthy of notice, too, that the seven years Act was passed during war with France, when it appears that Parliament did not scruple to grant or confirm a charter for countries to which Great Britain had, at best, but a disputed title, based only upon a very partial, and, even during peace, a very precarious possession; nor is it less worthy of remark, that, when Parliament refused to re-grant or continue the charter the Treaty of Ryswick had intervened, by which the rights of France were recognised, and those of Great Britain left, at most, in doubt, and when, therefore, any such Act would have been a direct violation of an international treaty.

Another opinion appears to have been obtained by the Hudson Bay Company at an earlier period, from Romilly, Holroyd, Cruise, Scarlett and Bell, equally upon the case drawn and without reference to the real points at issue, merely affirming that the grant of the soil contained in the charter is good, and that it will include all the countries the waters of which flow into Hudson Bay. This opinion is, therefore, like the other, of no weight on questions which were not before the learned gentlemen who gave it.

Opposite opinions were obtained at an earlier period by the North-West Company, viz: in 1804, from Sir V. Gibbs and Mr. Bearcroft. These opinions, however, although they touched the fundamental principles of the charter, had no reference to the interior countries on the Red River, Lake Winnipeg, the Saskatchewan, &c., for the simple reason that no opinion was asked on a case which only arose six or seven years later, when Lord Selkirk came on the field.

The position of the question at this period was that the North-West Company, being in possession not only of all the country formerly possessed by the Canadian French in that direction, but also of the country first discovered by themselves, to the north-west of the Churchill River, came to the conclusion that their trade could be more conveniently carried on with these more remote parts through Hudson Bay than through Canada. The question they submitted, therefore, was solely in regard to the validity of the charter in respect of the navigation, trade and fisheries of the Bay itself. The North-West Company as little dreamt of asking an opinion respecting the legality of their trade in the interior as the Hudson Bay Company thought, at that period, of attempting its forcible restraint. In the case put it is to be remarked that no reference is made to the early possessions of the French on the coasts of the Bay, and consequent possession of the Bay itself in communicating therewith, and yet, even without this, these opinions are entirely adverse to the exclusive privileges claimed under the charter.

After the difficulties occasioned by the more recent assumption of power in virtue of the charter to expel the North-West Company from the Red River country under the auspices of Lord Selkirk, had become serious, another opinion was obtained by that Company, in 1816, from Sir Arthur Pigott, Sergeant Spankie and Lord Brougham. This opinion must be held to be more valuable than those obtained by the Hudson Bay Company, inasmuch as it enters more into the merits of the case and is therefore more explicit as to the real views of the learned counsel on the subject submitted to them, whereas the opposite opinions are such as the gentlemen who gave them would be at liberty to ignore upon a fuller submission of the case, without incurring a charge of inconsistency.

The opinion under consideration is very decided on the point that the Red River and Saskatchewan countries are not within the limits of the charter, even upon the merits of description contained in the charter itself, apart from the question of prior possession by another State. The question of prior occupation of these localities by the French is indeed lightly touched upon, though the opinion, as above, is definitely given without it; but the rights of Canada now for the first time fully discussed.

based on the prior discovery, at least of the whole of the interior, prior occupation on the shores of the Bay itself, and international treaties do not appear to have ever been pronounced upon by any of those high legal authorities who have heretofore been consulted, because no such case has ever been submitted; and yet, based upon the history and facts, it may be taken to supersede all necessity for raising any question as to the extent of the royal prerogative in giving validity to such a charter.

Had the Hudson Bay Company indeed deemed their position good in law, as against the North-West Company, in respect of the Red River country, it can scarcely be supposed that they would have resorted to force at such a lavish expense (and it must be added, involving no small amount of bloodshed) when the question could have been so easily determined by the legal tribunals, at an expense altogether inconsiderable as compared with the actual losses and costs incurred. They have, indeed, attempted to show that they had not an equal chance with their rivals in the courts of this Province; but not to speak of the injustice of such an insinuation in itself, the objection is untenable while *they had the right of appeal*, and to suppose that they were deterred from taking such a course from any difficulty attending the proceeding would be simply absurd, when we find them organizing an army to defend their claims in those remote localities, and thus voluntarily removing the venue from the courts of law, by a far more difficult and expensive process, to the arbitrament of force, where the interference of law could not be so readily invoked to check their proceedings.

And if any justification of this course could be based on the supposed validity of their charter, and on the ground that it could be construed to cover that locality, why, when they failed to maintain their position by force, when the North-West Company, even after the temporary interruption of their trade through the seizure of Fort William by Lord Selkirk, still continued in the ascendant, why did they not then resort to a trial at law, which, if it had resulted in their favor, would at once have secured a power exactly commensurate with the emergency to maintain their rights; for then, if the civil power had proved insufficient, the whole power of the Empire would have been available as far as necessary. But, instead of trying the issue in a court of law, they finally amalgamated with their rivals, affording thereby clear proof that they had no hope of being able to treat them otherwise than as possessing equal rights, thus consenting to their opponents sharing with them what they had previously contended to be their private property.

To conclude the question of the Hudson Bay Company's territories under their charter, therefore, it is difficult to arrive at the result that they have any territorial rights at all; for, in the first place, the country was practically occupied by the French before the date of the charter, and consequently excluded from it; and in the second place, because the whole country, including Hudson Bay, was known as New France or Canada, as per maps and descriptions publicly known throughout Europe previous to that date; and, therefore, if not so before, became the property of France by the Treaty of St. Germain en Laye, in 1632, and as such necessarily could not be and expressly was not granted by their charter; and in the third place, because by the Treaty of Ryswick, the right of France to expel them as trespassers on her soil was manifestly admitted. And finally, even assuming that Great Britain originally had acquired a divided right with France, each to the extent of the establishments which their subjects respectively were the first to form, the Hudson Bay Company would only have a right under their charter to those particular posts or forts which they were the first to take possession of in localities previously occupied, for the Treaty of Ryswick conferred nothing upon them (if it even permitted them to retain anything, which is doubtful), the Treaty of Utrecht, although it gave Hudson Bay to the British, conferred nothing upon the Company apart from her British subjects; and the Treaty of Paris (although it gave Canada to Great Britain) conferred nothing upon them, except rights in common with other British subjects; while, until eleven years after the last-named treaty they never occupied anything beyond their original establishments on the coast, and those (also on the



coast) conquered from or ceded by France at the Treaty of Utrecht, but which could not, by such subsequent conquest or cession, be made subject to their charter.

#### BOUNDARIES OF CANADA.

Having thus disposed of the boundaries of the Hudson Bay Company's Territories—if such can be said to exist—the boundaries of Canada next come to be considered, and a division of the subject will naturally suggest itself into two heads. First, the original boundaries of Canada under the French, and second, the boundaries of Canada as acquired by Great Britain, in 1763. The southerly boundaries, when not affecting the present question, need not, of course, be particularly referred to.

It will not be necessary to enter at length into the question of the original boundaries under the French, as they have already been sufficiently indicated. They claimed all to the north of the St. Lawrence, and were the first to occupy Hudson Bay. If the British, besides their visits in search of a north-west passage, had seen fit to occupy the country for any practical purpose and been the first to do so, they might, no doubt, have claimed it for their own. Had any such actual occupation followed the voyages of Hudson and Button, notwithstanding the French footing on and claim to the whole continent north of the St. Lawrence, it must be admitted that a valid title would have been created. But when such occupation was only first attempted some fifty or sixty years later, in support of a commercial project of two Frenchmen, who had been already engaged in the trade, and when France was in formal and actual possession, it cannot be denied that the French title was the preferable one. Of the original territories of Canada, Great Britain, therefore, acquired a part by the Treaty of Utrecht, the residue remaining to France for fifty years later. On this head there seems to be no dispute, for British authorities designate a part of what they claim to have been acquired by that treaty as Canada.

It now remains to be considered what were the boundaries of the country finally acquired by the Treaty of 1763, which, according to French and other authorities, was much larger than according to British authorities; but it will, perhaps, be most satisfactory for the present to adopt the latter.

One of the most circumstantial British accounts of the westerly possessions of the French is to be found in a geographical and historical work published 1760. by Thos. Jefferys, in 1760. After giving the French account of Canada, he proceeds to give the English version of its boundaries in the following words:—

“Canada, according to the English account, is bounded on the north by the high lands which separate it from the country about Hudson Bay, Labrador or New Briton, and the country of the Esquimaux and the Christeneaux; on the east by the River St. Lawrence, and on the south by the Outawais River, the country of the Six Nations and Louisiana, its limits towards the west extending over countries and nations hitherto undiscovered.”

The high lands referred to in the above are distinctly delineated on the maps published with the work as the northerly section of the range which, dividing to the north-west of Lake Superior, separates the waters flowing direct to Hudson's Bay from those flowing into Lake Winnipeg, crossing the Nelson River at Split Lake or Lac des Forts, etc. Describing the country from Lake Superior westward, the author goes on, at page 19, as follows:—

“At the mouth of Les Trois Rivières, or the Three Rivers, is a little French fort called Camenistagouia; and twenty-five leagues to the west of the said fort, the land begins to slope, and the river to run towards the west.

“At ninety-five leagues from this greatest height lies the second establishment of the French that way, called Fort St. Pierre, in the Lake des Pluies. The third is Fort St. Charles eighty leagues farther on the Lake des Bois. The fourth is Fort Maurepas, a hundred leagues distant from the last, near the head of the Lake of Quinipigon. Fort La Reine, which is the fifth, lies a hundred leagues farther on the River of the Assiniboels. Another fort had been built on the River Rouge, but was

deserted on account of its vicinity to the two last. The sixth, Fort Dauphin, stands on the west side of Lac des Prairies, or of the Meadows, and the seventh, which is called Fort Bourbon, stands on the shore of the Great Lake Bourbon. The chain ends with Fort Poskoyac, at the bottom of a river of that name, which falls into Lake Bourbon. The River Poskoyac is made by Delisle and Buache to rise within twenty-five leagues of their west sea, which, they say, communicates with the Pacific Ocean. *All these Forts are under the Governor of Canada.*"

The above, it will be observed, is the English account of what was still French Canada, in 1760, just after the taking of Quebec and before the final conquest and cession of the country. The River Poskoyac is that which now bears the name of the Saskatchewan, upon which Sir Alexander Mackenzie states that the French had another fort higher up than Fort Poskoyac.\*

The same author, Jefferys, in his description of Louisiana, says: "It is bounded on the north by Canada; on the east by the British Colonies of New York, Pennsylvania, Maryland, Virginia, &c., &c." The map accompanying this description claims the British Colonies, Virginia, &c., as coming up to the east bank of the Mississippi, and therefore it is Louisiana west of the Mississippi that he refers to as bounded by Canada on the north; that is to say, from the sources of the Mississippi westward.

The same year in which this work was published, all Canada was surrendered to the British, though not finally ceded till three years after.

In surrendering the country to the British the Marquis de Vaudreuil submitted articles of capitulation which were marked "granted," or "refused, etc." according as they were finally agreed to by General Amherst. In guarding the interests of the Canadian colonists in every part of the country surrendered, the localities above described by English authority as being under the "Governor of Canada," are designated as "*the countries above*," and the 46th article of the capitulation is as follows:

"The inhabitants and merchants shall enjoy all the privileges of trade under the same favors and conditions granted to the subjects of His Britannic Majesty as well in the '*countries above*' as in the interior of the colony.—Granted."

By which these countries were manifestly surrendered along with the rest of Canada, and the future rights of the Canadians guaranteed thereto by the provision that no British subjects should ever enjoy any privileges of trade there in which they did not share; not, indeed, that this guarantee, although it would decidedly have that effect, could have been foreseen as a safeguard against the Hudson Bay Company, who had never at that period penetrated into the country, it being simply intended to prevent any cause whatever from depriving the French colonists of the benefits of a trade which had always been one of the most important in the country.

In the negotiations for peace that followed, in 1761, which were directed on the one part by Mr. Pitt, and by the Duke de Choiseul on the other, and which ended, for the time, in failure, France contended for the boundaries of Louisiana extending to Canada, which Great Britain opposed. Finally, the Treaty of 1763 allowed Louisiana to extend west of the Mississippi to its source, and made that River from its source downwards, the boundary between the British and French possessions, the boundary from the source of the Mississippi westward being left undetermined, a question which had ultimately to be settled with the United States instead of with France.

1846. The system adopted and industriously followed up by the two rival Companies after their union had indeed so disseminated an erroneous appellation, that the country north and north-west of the Mississippi had come to be commonly called the Hudson Bay Company's Territories; but when diplomatists and statesmen came

\* "It may be proper to observe that the French had two settlements upon the Saskatchewan, long before, and at the conquest of Canada; the first at the Pasquia, near Carrot River, and the other at Nipawi, where they had agricultural instruments and wheel carriages, marks of both being found about those establishments, where the soil is excellent."

Note to general history of the Fur Trade, p. lxxii. See Mackenzie's Voyages, London, 1801.



to study the subject, tracing up from history and fact their respective claims, as bearing upon the Oregon question, they did not stultify themselves by the use of such an erroneous term; accordingly, we find Mr. Buchanan, now President elect of the United States, using the following language, in concluding a proposition made by him on 1st July, 1846:

"The line proposed will carry out the principle of continuity equally for both parties, by extending the limits both of *ancient Louisiana and Canada* to the Pacific along the same parallel of latitude which divide *them* east of the Rocky Mountains."

The same line of argument sustains the British plenipotentiary when, in arguing the pretensions of his government to Oregon, he traces the progress of the Canadians westward across the Rocky Mountains to the Pacific.

The next step in the natural progress of events is the description of Canada under British sway. The first step after the Treaty of Paris was to provide for the government of the settled parts of the country, for which purpose the Government of Quebec was organized, comprising, however, a very limited portion of Canada, as per proclamation of 7th October, 1763, the rest of the country being thereby reserved from survey or settlement, for the moment, for the protection of the Indians. The descriptions of Canada, however, of that period took in the country to the westward of Pennsylvania, by the Ohio River, to the Mississippi. And the Imperial Statute of 1774, commonly called the "Quebec Act," describes the Province as extending "northward to the southern boundary of the territory granted to the Merchant Adventurers of England trading to Hudson Bay," *but does not specify what their*

Independence of United States; boundary of Canada then adopted.

*boundaries are*, and it will be seen, by what follows, that the construction put upon this Act, by the British Government, nine years later, was adverse to the present pretensions of the Company. The Treaty of Independence of the United States provided a new southerly boundary for Canada, a part of what had formerly gone under that name having been ceded to the United States; and by the Commission issued to Lord

Dorchester—the first after this treaty—the same words are used in describing the boundaries of Canada, as in the treaty, viz.:—

Lord Dorchester's Commission.

"Through Lake Superior northwards of the Isles Royal and Philipeaux to the Long Lake; thence, through the middle of the said Long Lake and the water communication between it and the Lake of the Woods, to the said Lake of the Woods; thence, through the said lake to the most north-western point thereof, and from thence, in a due west course, to the River Mississippi, and northward to the southern boundary of the territories granted to the Merchants Adventurers of England trading to Hudson Bay."

This description, it will be seen, leaves the boundaries beyond the sources of the Mississippi indeterminate. On the supposition that a line due west from the Lake of the Woods would intersect the Mississippi, the King was obliged to limit the extent of Canada, on such line to the Mississippi proper, because by the Treaty of Paris, France retained the whole country to the west of the Mississippi from its source downwards. Had the King's Commission said from the intersection of the *due west* line with the Mississippi "*due north*," it might have been argued that it provided a westerly boundary, but it simply says "*northerly*" because although it was necessary to limit it to the Mississippi, where Louisiana commenced, there was no need for being specific beyond the sources of that river where the westerly boundary of Canada was yet unknown. Of the extent of Canada to the north by this description, it is enough to say that it was the same as by the Act of 1774, and required the boundaries of the territory granted to the Hudson Bay Company, to be defined *first*, and if that failed it had no other limit, short of its original extent under the French.

At the "definitive Treaty of Peace" with the United States their territory did not extend at any point to the west of the Mississippi, until they acquired Louisiana in 1803. It will be remembered that Mr. Pitt objected to the northerly boundary of

Louisiana coming so far north as the southerly boundary of Canada, in 1761; that nevertheless it was so settled in 1763 that the Mississippi should be the boundary to its source. This result seems to have been a compromise by which Louisiana was confined almost entirely to the west of the Mississippi, Great Britain thus gaining her point on the east, which came more nearly in contact with her old possessions, and giving to France entire scope on the west to the very sources of the Mississippi, the boundary from thence westward being left undetermined. This point had accordingly to be afterwards settled with the United States, who had in the meantime acquired the rights of France. This settlement ultimately admitted the 49th parallel of latitude as the northerly boundary of Louisiana, and as such necessarily the southerly boundary of Canada from the Lake of the Woods due west to the Rocky Mountains, passing north of the source of the Mississippi proper, though intersecting some of its tributary streams, the only error in which was that the line should not have been north of the source of the Mississippi, an error resulting from a previous treaty with the United States, at a time when it was supposed that the parallel of latitude agreed upon east of the Mississippi would intersect that river.

Were the King's letters patent to Lord Dorchester indeed taken literally at the present day in regard to the southerly boundary of Canada, the due west line of the description, not intersecting the Mississippi, would go on as far as British territory, not otherwise organized, would carry it, which would be to the Pacific; or if limited at all, it would be by the first waters of the Mississippi which it did intersect, which would be the White Earth River, and this would, in fact, correspond with the extent of Canada previously known to the French, taking in all the old forts already mentioned and leaving out the "countries and nations hitherto undiscovered," that is at the time of the conquest, though at the period when that description was made the North-West Company were carrying on an active trade much farther to the west: nor is it clear that this would be adverse to the intention of the description, for some of the maps of that period represent the Mississippi as west of the Red River.

The southerly boundary of the British dominions west of Lake Superior being therefore demonstrated as identical with the southerly boundary of Canada to *some point due west* of the Lake of the Woods, the only question is as to where that point is to be found; is it the White Earth River, the first waters of the Mississippi with which the due west line intersects? or is it the summit of the Rocky Mountains, on the same principle that the *co-terminous* boundary of Louisiana was ultimately so construed?

The next point to be determined is the northerly extension of Canada from its southerly boundary. The official description, corresponding with the Act of 1774, carries it to the boundary of the Hudson Bay Company's Territories, but the same official description ignores the boundaries they claim (*thus proving so far the construction then put upon the Act of 1774*), for it carries the southerly boundary of Canada down the watershed of Hudson Bay from two to three hundred miles to the Lake of the Woods, and *thence due west*, thus making the starting point far within what the Hudson Bay Company claim, and thus, *from a point within what they claim* as their territory, it is to extend northerly to their territories. If, then, the "rights" of the Hudson Bay Company were even far less equivocal than they are, their southerly boundary, as pretended by themselves, is entirely demolished, and the question arises *where is the boundary of their territories so described as the northerly limit of Canada?* The question of territorial rights has already been so fully discussed that it is unnecessary to repeat the arguments. The only possible conclusion is, that Canada is either bounded in that direction by a few isolated posts on the shore of Hudson Bay, or else that the Company's territory is—like the intersection of the due west line with the Mississippi—a myth, and consequently that Canada has no particular limit in that direction.

The accompanying map illustrates the northerly boundary of Canada, according to British authorities as ceded by the French in 1763, there being no westerly boundary then known or since provided. This is perhaps all that could in the first instance be absolutely claimed as under the Government of Canada, were it not that,



since the final determination of the southerly boundary, the Imperial Government merely described the authority of this Government as extending over *all the countries theretofore known as Canada*, which might fairly be taken to cover the territory acquired by the Treaty of Utrecht, as well as that acquired by the Treaty of Paris.

#### BOUNDARIES OF THE INDIAN TERRITORIES.

The boundaries of the Indian Territories need little consideration or explanation, as they simply include all that belongs to Great Britain in North America to the north and west of Canada, excepting the territory (if any) which the Hudson Bay Company may of right claim. It must not be lost sight of, however, that the great bulk of this territory has been acquired by the Crown of Great Britain through discoveries of its Canadian subjects, beyond whatever may be determined to be the westerly boundary of Canada, across the Rocky Mountains to the shores of the Pacific, and by the McKenzie River to the Frozen Ocean. The importance of these discoveries in the negotiations pending the Treaty of Oregon, cannot be forgotten, for it is in virtue of Canadian discovery and Canadian settlement that the British negotiator was enabled to maintain his position in the controversy, and secure a footing for his country on the Pacific. And when, it may be asked, did ever the Hudson Bay Company afford such an important advantage to British interests?

Sir Alexander McKenzie's journey in 1793 across the Rocky Mountains (the first ever performed north of Mexico) is thus referred to by the British Plenipotentiary, in negotiating the Treaty of Oregon :

"While Vancouver was prosecuting discovery and exploration by sea, Sir Alexander McKenzie, a partner in the *North-West Company*, crossed the Rocky Mountains, discovered the head waters of the river since called Frazer's River, and following for some time the course of that river, effected a passage to the sea, being the first civilized man who traversed the Continent of America from sea to sea in these latitudes. On the return of McKenzie to Canada the *North-West Company* established trading posts in the country to the westward of the Rocky Mountains."

Oregon Negotiations.

This was the British title to that part of the country, and but for this journey and the establishing of these trading posts, by which were acquired what the same diplomatist says "may be called beneficial interests in those regions by commercial intercourse," the probability is that Great Britain would now hold no continuous possessions across this continent, if she even held any isolated localities on the Pacific in virtue of her discoveries by sea.

Lewis and Clark, Americans, descended the southerly branch of the Columbia River, 1808, and in 1811, Mr. Thompson, of the *North-West Company*, came down the main branch from the north, whose discovery is thus referred to by the British Plenipotentiary :

"In the year 1811, Thompson, the Astronomer of the *North-West Company*, discovered the northern head waters of the Columbia, and following its course till joined by the rivers previously discovered by Lewis and Clark, he continued his journey to the Pacific."

And again :

"Thompson, of the *North-West Company*, was the first civilized person who navigated the northern, in reality the main branch, of the Columbia, or traversed any part of the country drained by it."

This is the title by which Great Britain has been enabled to retain the main branch of the Columbia to its intersection with the 49th parallel of north latitude, and the free navigation for her subjects of the whole river from that point to its discharge in the Pacific Ocean, as secured by the Treaty of Oregon, 1845.

With respect to McKenzie's discoveries to the north, no diplomatic reference thereto can be quoted, inasmuch as there has been no disputed title on the part of any foreign power to give rise to any controversy upon the subject.

It may be fairly urged, therefore, that these "Indian Territories," originally the fruits of Canadian enterprise, perseverance and industry, should no longer be shut out from the Canadian people, but should in fact be united to Canada as a part of the British Dominions, which Canadian subjects have had the merit of acquiring and retaining for the British Crown.

## JURISDICTION.

The question of jurisdiction next comes under consideration, and in this, as regards the Hudson Bay Company, it is apprehended that the actual exercise of it is widely different from what existing laws would sanction.

The mystery with which this Company have managed to shroud their operations in the interior renders it difficult to say what they do or what they do not do, but it is generally understood that they actually exercise unlimited jurisdiction in every respect, civil, criminal and governmental, and that not only in what has been considered their own territories, but also in the Indian Territories and those parts of Canada not immediately contiguous to settlement, all which existing law positively forbids them to do, it need not be said in Canada, but either in their own territories or in the Indian Territories.

By the Imperial Statute, 43 George III., chapter 138, the jurisdiction over the Indian Territories and all "*parts of America not within the limits of the Provinces of Upper or Lower Canada, or either of them, or within any civil government of the United States of America,*" is vested in the said Provinces. It is a curious circumstance that the very words of this Act which seem to have been intended to deny all claim to any jurisdiction on the part of the Hudson Bay Company, should have been taken hold of as the means of questioning its reference to them. The preamble of the Act in giving the reason for the enactment states that, offences not committed within the limits of the Canadas or the United States, as above, "are therefore not cognizable by any jurisdiction whatever." This the Company argued could not mean their territories *because* jurisdiction *did* exist there. The Act, they said, could not mean *all* British America not within the limits of the Canadas, for the assertion that no jurisdiction existed was not true of Nova Scotia or New Brunswick, and therefore might not be true of Hudson Bay. Thus, in fact, it appears that the framers of the Act having their minds directed to the North-West, where the offences referred to had occurred, forgot to exclude the provinces lying on the opposite side of Canada, on the Atlantic Coast, from its operation; and this omission, when the war was carried on between the two Companies in the interior, Lord Selkirk turned to account to throw doubt on the applicability of the Act to the Company's territories. But the assumption that this Act does not affect their pretensions is doubly faulty; for, when more closely considered, it either brings their territories within Canadian jurisdiction or it ignores them altogether, and in either case it contracts the limits they claim. If they make good their assertion that it does not affect their territories, then it destroys their claim to have their limits extended to the boundaries of Canada. The territories referred to in the preamble of the Act are those not within the limits of *either* Lower or Upper Canada, the two provinces being treated *distinctly* as regards the territories not within their limits. Now, taking Lower Canada, in the first instance, it is bounded by the Ottawa, and a line due north from the head of Lake Temiskamingue, and the places outside its limits on which the Act would have effect, if not the Company's territories must certainly be something between those limits and their territories. But the question is more important as regards the places outside of Upper Canada. If the maps accompanying the "Statement of Rights" submitted by Sir J. H. Pelly be correct, then the territory effected by the Act is about 1,500 miles distant in its nearest part from the most remote point in Canada. In other words, Canada ends at the source of Pigeon River, and the Indian Territories begin at the top of the Rocky Mountains, and we are required therefore to assume that the Imperial Legislature meant to commit the absurdity of giving jurisdiction to the courts of Canada over a territory beginning at a distance of some fifteen hundred miles from her frontier,



while a different British jurisdiction (that of the Company) prevailed in the intervening space. But assuming for fact, the Company's view of the case that it did not affect their territories, we find the very purpose for which the Act was passed as expressed in the title to be to provide a jurisdiction for "certain parts of North America *adjoining* to the said provinces" of Lower and Upper Canada. Consequently, if the territory affected by the Act only commences at the summit of the Rocky Mountains, as represented by the map submitted by Sir J. H. Pelly, then as it *adjoins* this province, Canada must extend to the summit of the Rocky Mountains, so that on their own showing the jurisdiction they exercise in the intervening space, at Red River for instance, is out of their own territories, and therefore not only without the sanction of law but in violation of a positive enactment. They must thus either ignore their own pretensions to the territory between what they call the westerly boundary of Canada, and easterly boundary of the "Indian Territories," or they must admit that the Act under consideration (which is still unrepealed) applies to their territories, in which case their jurisdiction in every part would be in violation of the statute.

But if there was any doubt on the subject before it was fully removed by the Act 1 and 2, Geo. 4, Cap. 66, which was passed after all the strife and bloodshed in the north-west, and which after reciting the doubt raised respecting the former Act being applicable to the Hudson Bay Company's Territories, declares at section 5 in the strongest and most comprehensive manner, that the said Act and all its clauses shall be construed to apply to their territories, anything in "*any grant or charter to the Company to the contrary notwithstanding.*"

This Act, 1 and 2, Geo. 4, Cap. 66, gives jurisdiction as full and complete as language can make it over all the Indian and Hudson Bay Company's Territories to the courts of Canada, and it provides for the appointment of Justices of the Peace by the Crown (both of the Indian Territories and Hudson Bay Company's Territories) to whom the *Canadian Courts are empowered* to issue Commissions "to take evidence in any cause or suit, and "return the same, or try such issue, and for that purpose to hold courts, &c." These courts are most distinctly made subordinate to the courts of Canada, &c., and can in fact be created by, and exist through them only.

By the 11th and 12th clauses, however, the Crown is empowered to create Courts of Record, without the intervention of the Canadian courts (but without limiting the power to be exercised thro' them), for the trial of small causes and petty offences, the former being limited to civil cases not effecting a larger amount than £200, and the latter to cases in which the offence does not subject the person committing the same to capital punishment or transportation.

By this Act, it is repeatedly declared and enacted in the most emphatic manner, that its enactments shall have effect "notwithstanding anything contained in any charter granted to the governor and Company of Adventures of England trading to Hudson Bay."

It is true the last clause of the Act reserves to the Company in the most ample manner all rights and privileges they "*are by law entitled to claim and exercise under their charter.*" This it will be observed is what the "Statement of Rights" refers to when claiming a "*concurrent jurisdiction*" with the Canadian courts. Now, when it is observed that the legislature has refrained from expressing any opinion as to what the rights or privileges of the Company really are, and cautiously abstained from recognising any but what they already had "*by law,*" it is difficult to suppose that it was the intention of the Act to recognise in them those very powers which it was making the most ample provision for the exercise of by a totally different authority in strong and repeatedly expressed abnegation of their pretensions.

It is also to be observed that the previous Act, 43 Geo. 3, which denies their jurisdiction, is still in force, unrestricted in every particular, and not deriving its force from the subsequent statute, which is merely *declaratory* in that particular, of its proper construction.

The question of whether the Company can exercise any legal jurisdiction within their own territories,—limited to their just extent,—loses its importance, however, in

face of the more serious question of its actual exercise both in Canada and Indian Territories, and that even to the extent of life and death, while the intention of the Imperial Legislature in creating a jurisdiction for those territories, reserved all important cases, either civil or criminal, for trial by the regularly constituted legal tribunals of an organized community, where the *charter* of British rights would be held as sacred as the interest of the commercial Company who assume to be themselves the Judges where (without any reflection upon them collectively or individually) cases must, in the very nature of things, arise in which they ought to be the judged.

It therefore becomes of very great moment to ascertain the truth of certain statements that have been made to the effect that their principal officers at Red River hold their commissions from the Crown, and if so, under what form, for what extent of territory, and how described. Such commissions might no doubt have been issued under the statute 1 and 2, Geo. 4, for the Hudson Bay Company's Territories and for the Indian Territories, for the trial of small causes and offences of a minor nature, as already described, without in the least infringing upon or limiting the right of Canada to intervene; but if the British Government has expressly included the Red River country in any such commissions, it can only have been through a misapprehension of boundaries, which is not to be wondered at from the policy pursued since the union of the Companies, and the erroneous view of the case they have so constantly disseminated, and no doubt any such powers, if they have been granted, would be withdrawn as soon as the case has been fully under the consideration of the imperial authorities.

In concluding the question of jurisdiction it is necessary to observe that the Imperial Statutes, herein quoted, which vest the jurisdiction in Canada to the shores of the Pacific, have been repealed in so far as they relate to Vancouver's Island by the Act 12 and 13 Vic., Cap. 48, which re-invests the jurisdiction of Vancouver's Island in the Imperial Government until the establishment of a local legislature, which the Act contemplates.

Vancouver's Island.

At the same time a charter was granted to the Hudson Bay Company for the colonization of the Island, conveying a grant of the soil.

Neither the Act nor the charter, however, confers any jurisdiction upon the Company.

The Company were required by the terms of the grant to colonize the Island within five years, failing which the grant was to become void. It was also stipulated that the grant might be recalled at the time of the expiration of their lease for the Indian Territories upon payment to the Company of the expenses they might have incurred, the value of their establishments, &c.

#### GENERAL REMARKS.

Before concluding this report it is desirable to offer a few general remarks upon the subject, which the policy of the Company has kept out of view, and which consequently is not generally well understood.

The Hudson Bay Company claim under three separate titles, the first of which is the charter of Charles II, granted in 1670, *for ever*. The second, is the lease, originally granted, in 1821 to them in conjunction with the North-West Company of Canada for the Indian Territories. The third, is their title to Vancouver's Island, as explained. Under the first they base their claim to government, jurisdiction and right of soil over the whole country watered by rivers falling into Hudson Bay,—at least, such is the theory, although they have abandoned it south of the present southerly boundary of Canada at Rainy Lake, the Lake of the Woods and along the 49th parallel, to the south of which those rivers take their rise. Under the second, they claim exclusive trade from the Rocky Mountains, west to the Pacific, and from the sources of the McKenzie River to the Frozen Ocean. Their is no dispute about their title on this head, but their lease expires in two years, and it is the renewal of this lease for a further period of 21 years which they now seek to obtain.



It will be seen by the question of boundary already treated, that the country about Red River and Lake Winnipeg, etc., which they claim under their charter, absolutely belongs to Canada; and it will be observed that the abstract right, not the value of the territory, has been dwelt upon, but unfortunately the latter has been as little generally understood as the former, the result of the means the Company have taken to conceal it, for seldom if ever has the wisdom and foresight of man devised a policy better calculated to the end for which it was intended than that adopted since the union of the Companies, in 1821.

Before that union the Canadian fur trade gave employment to some thousands of men as mere carriers, or "*Voyageurs*," as they were termed.

In endeavoring to depreciate the national services rendered by the North-West Company during the war of 1812, at the capture of Michilimacin, &c., Lord Selkirk alludes to this body of men as forming the "*Voyageurs Corps*," but denies credit to the Company for their important services which he admits "in a great measure secured Canada, because they were not constantly employed by the Company, and effected this service at a season of the year when the Company did not require them. Assuming this to be the fact, however, had there been then, as now, no such Company and no such trade, there would have been no such body of men ready for action in the hour of danger.

Selkirk's Pamphlet,  
p. 27 to 35.

Had the circumstances of the trade continued the same to the present day, settlement must have followed the route of such a line of traffic, and the continual intercourse between this country and the fertile plains of the "Far West" would have placed us as far in advance of our American neighbors in the colonization of those countries, as we are now behind them.

But the policy of the united Companies has been so admirably carried out in all its details, that an erroneous impression respecting the country and everything connected with it had gradually got possession of the public mind, and it is wonderful with what tact such impressions may sometimes be conveyed without any statement being made contrary to truth. The very appellation of "*Hudson Bay Territory*," as applied for instance to the Red River country, carries a false impression with it, for the waters of the Mississippi and the Red River, the Assiniboine and the Missouri, interlace with each other there, and therefore, the designation of "*Gulf of Mexico Territory*" would just be as correct. But what a different impression it would convey as regards climate? Again, almost every mention of the available parts of the Western Territories, which are well known to possess a soil and climate adapted in the highest degree for successful settlement, is interwoven with some reference to *ice* in some shape or other, which no doubt the Company truly encounter in carrying the trade some eight hundred miles due north through Hudson Bay.

An admirable specimen of this kind of policy, by which erroneous impressions may be conveyed, is to be found in Sir J. H. Pelly's letter to Lord Glenelg, of 10th February, 1837:

"For many years prior to the conquest of Canada, French subjects had penetrated by the St. Lawrence to the frontiers of Rupert's Land; but no competition had occurred between the traders of the two countries within the territories of the Hudson Bay Company previous to the cession of Canada to Great Britain.

"Subsequent to that period, the greater capital and activity of British subjects led to a competition, first on the frontier parts, then in the interior, and at last to the formation of a Company, combining all the individuals at that time engaged in the trade, to countries bordering on and west of Lake Superior, under the firm of the North West Company of Montreal.

This, when dissected, is a significant paragraph. Where are "the frontiers of Rupert's land," if the French, whose forts were all around Lake Winnipeg, had not reached them before the cession of Canada to Great Britain? This is an important corroboration of the views of the boundary question explained in the present report.

Parliamentary Papers,  
No. 547 of 1842.

That "no competition had occurred within the Territories of the Hudson Bay Company" up to that time may be very true, because the Company had never come up from the shores of the Bay, and the French had not gone down—from their places on Lake Winnipeg—to the Bay. The second paragraph, above quoted, may also be substantially true, but yet it is so framed as to convey to the general reader that the competition arose from the inhabitants of Canada advancing beyond where they had been before; whereas it was the Hudson Bay Company who then came up, for the first time, from the shores of the Bay, which led to the competition, "first on the frontier parts" of Rupert's land, "then in the interior," on Lake Winnipeg, the Saskatchewan, &c., where the Canadians had long enjoyed the trade without competition.

Such is the system and policy pursued by the Company to exclude from view and create erroneous impressions respecting the western portions of this Province, than which there is perhaps no finer country in North America. The same course marks their proceedings at the present moment, for no intimation has been given in this country of their intention to apply for a renewal of the lease of the Indian Territories, though, exercising the privileges they do in countries subject to the Canadian Government, it would not have been unreasonable to expect a different course. Neither does it appear that they have taken any means to inform the inhabitants of those countries, whose rights and interests are most deeply affected by the action to be taken, that they were to make this early application for renewal of their lease. Had it been effected in the quiet manner they seem to have desired, —a consummation which the thanks of the country are due to the Imperial Government for having refused to sanction—they *only* would have been heard in their own case, and the result would have been, alike to the people here and in the more remote territories, a surprise.

Canada has no quarrel with the Hudson Bay Company, and desires no harsh measures towards them. It would be alike ruinous to them and injurious to the countries over which they hold either legal or illegal sway to put a sudden stop to their operations, but it is an error to suppose that the governing of those countries is a task of uncommon difficulty. The state of anarchy which prevailed in those countries during the warfare of the Companies was the result of the strife between them, where there was no sort of authority, except what they seemed equally to yield, and not arising from any turbulent or ungovernable spirit on the part of the native population. On the contrary, the moment a recognized authority stepped in to control both Companies, implicit obedience was at once yielded to it throughout those vast territories, and either party would have found itself powerless to command followers for any purpose of further aggression. This was upon the occasion of the withdrawal of all commissions of the peace, previously granted to the leading people of the two Companies, the appointment of two special commissioners (one of them a member of the Executive Council of Lower Canada), and the issuing of a proclamation in the name of the Prince Regent by authority of a despatch from Earl Bathurst, of 6th February, 1817, requiring the mutual restitution of all the places and property captured during the strife, to the party who had originally possessed the same, and the entire freedom of the trade to each party, until further adjudicated upon. Galling as this restitution must have been in numerous instances where party feeling, embittered by the loss of many lives, had reached the highest pitch of excitement, it was immediately complied with.

The proper course to pursue, therefore, would be to lay before the Imperial Government the expediency of annexing the Indian Territories to Canada, showing that by this means only can those countries be retained long in the possession of Great Britain. For colonized they *must and will be*; it is only a question of who shall do it. If we do not, the Americans will, and that in spite of anything the Company can do to prevent it. That these territories are fit fields for settlement it is useless to dispute, for one physical fact upsets all the theories to the contrary. Where a country is found to sustain *animal life* to such an extent that hundreds of thousands of wild cattle find subsistence there both in summer and winter, there man



can also find a home and plenty. Nor is the country possessing this characteristic confined to a narrow strip along the frontier, but continuing to widen to the westward it is found that the climate, even on the east side of the Rocky Mountains and at a depth of seven degrees north of the American boundary, is milder than the average of the settled parts of Upper Canada.

On the west side of the Rocky Mountains the climate is mild to a still higher latitude, but Vancouver's Island, together with the contiguous main land, is perhaps one of the finest countries in the world for colonization. The only drawback is the difficulty of access, a difficulty which the present system will never remove, for it looms larger now than it did forty or fifty years ago, when the North-West Company of Canada poured a continuous stream of traffic across the continent. This Island cannot now of course be annexed to Canada on the same terms as the other Indian Territories, as the existing charter under which the Island is held (a different and distinct thing, be it remembered, from either the old charter or the expiring lease) entitles the Hudson Bay Company to payment of the value of their establishments if the grant be rescinded, which Canada would naturally be expected to pay, if the Island were conceded to her, and it might be well to see now upon what terms this could be done, because it seems if it be not done at the expiration of the lease of the "Indian Territories," it could not be done afterwards, unless indeed the Company have failed to fulfil the conditions required within the first five years.

Twelve years ago the United States had no communication with their territories on the Pacific except by sea, and during the Oregon negotiations, when proposing strenuous measures upon the subject, the President in his Message to Congress, 2nd December, 1845, says:

"An overland mail is believed to be entirely practicable; and the importance of establishing such a mail at least once a month is submitted to the favorable consideration of Congress."

How different the circumstances now, and how "entirely practicable" it has proved need not be dwelt upon, but it must be remarked that at no other point north of the Gulf of Mexico are the facilities for communication across the continent anything like equal to what they are through Canada, there being good navigation three-fourths, if not more, of the whole distance; first to the head of Lake Superior, from whence the navigation is broken to Lake Winnipeg (though about 150 miles of this distance is navigable), then through that lake to the Saskatchewan, on which there are obstructions in the lower part, near the lake, from whence the navigation is unimpeded to the very base of the Rocky Mountains.

It would be very desirable, therefore, and quite practicable, if the British Government will consent, to annex the Indian Territories, extending to the Pacific and Vancouver's Island, to Canada, to establish, during summer, a monthly communication across the continent. It is of incalculable importance that these measures should be most forcibly pressed upon the Imperial Government at the present juncture, for on their solution depends the question of whether this country shall ultimately become a petty state or one of the great powers of the earth; and not only that, but whether or not there shall be a counterpoise favorable to British interests and modelled upon British institutions to counteract the preponderating influence—if not the absolute dominion—to which our great neighbor, the United States, must otherwise attain upon this continent.

No reference has been here made to the controversy between the Company and those who accuse them of exercising a pernicious influence over the Indian population, nor is it necessary to enter into the subject farther than to point out the erroneous impression the Company strive to inculcate, to the effect that they are necessary to the Indians. It may well be that the state of things is better, under them, than it was when the two powerful companies were in hostile array against each other; and it may be that their affairs are as well conducted, with reference to their effect upon the native population, as could well be expected of a commercial company, having the primary question of profit and loss as the object of their association. But the question really comes to be, whether those countries shall be kept *in*

*statu quo* till the tide of population bursts in upon them, over an imaginary line, from a country where it has been the rule that the Indian must be driven from the lands the white man covets; or be opened up under the influence of the Canadian Government, which has always evinced the greatest sympathy towards the Indian race, and has protected them in the enjoyment of their rights and properties, not only in their remote hunting-grounds, but in the midst of thickly-peopled districts of the country.

CROWN LAND DEPARTMENT,  
Toronto, 1857.

11.—EVIDENCE OF WM. McD. DAWSON.—FROM THE REPORT OF A COMMITTEE—THERE WERE TWO OTHER WITNESSES EXAMINED—ALLAN McDONELL AND GEO. GLADMAN—HURRIEDLY GOT UP AT CLOSE OF SESSION, 1857.

MONDAY, 8th June, 1857.

Mr. WILLIAM McD. DAWSON called in and examined.

I am head of the Woods and Forests Branch of the Crown Land Department, and reside in Toronto.

I have never had any difficulty or quarrel with any one connected with the Hudson Bay Company.

Have you particularly studied the titles under which the Hudson Bay Company claim certain rights of soil, jurisdiction and trade on this continent?

I have made this subject a particular object of study for many years, and have omitted no opportunity of acquiring information upon it, and although with more time than I could devote to it, and a more extended research, much additional information could be obtained, I believe that it would only tend to fill up details, and strengthen and confirm the results of the investigation I have already made.

Will you state to the Committee the result of your investigation?

The result of my investigation has been to demonstrate that in the Red River and Saskatchewan countries, the Hudson Bay Company have no right or title whatever, except what they have in common with other British subjects. Wherever they have any possession or occupancy there they are simply squatters, the same as they are at Fort William, La Cloche, Lake Nipissing, or any of their other posts in Canada.

The Governmental attributes they claim in that country are a fiction, and their exercise a palpable infraction of law.

I am no enemy to the Hudson Bay Company, nor to any individual connected with it, and I think that there are, at the present day, extenuating circumstances to justify a great degree of forbearance towards them, when their position comes to be dealt with either judicially or legislatively.

Illegal as it undoubtedly is, their present position is a sort of moral necessity with them. The first attempt of the Company, under Lord Selkirk's regime, to assume that position, was no doubt a monstrous usurpation, but it was defeated, though not till it had caused much bloodshed.

The Hudson Bay Company and the Canadian traders (North-West Company) afterwards amalgamated, and then, in pursuance of a policy, most dexterously planned and executed, carried the trade away back into the interior, from the very shores of the lakes and rivers adjoining the settlements of Canada, and took it round of Hudson Bay to keep it out of view, to lessen the chances of a new opposition springing up.

They also gave out that it was their country—a fiction which the license of exclusive trade for the Indian territories helped to maintain—and they industriously



published and circulated maps of it as such, which, being copied into other maps and geographical works strengthened the delusion, till it became very general indeed.

When, therefore, by this means they had been left alone in these remote territories, without any intercourse with the organized tribunals or legitimate Government of the country—an intercourse which their monetary interests forbade them to seek—it became a sort of necessity for them to establish a jurisdiction of their own.

It is true that they have gone to an extreme in this matter which it would be difficult to excuse; but in such a case it is hard to take the first step and be able to stop afterwards, more particularly when it consists in a total antagonism to existing law, or rather in assuming to themselves the functions of constituted authorities where they legally possess only the rights of subjects and traders, in common with the rest of the community.

But having once assumed and exercised such powers, and thereby made themselves amenable to the laws of the country, it is not to be wondered at that they have sought to justify it on the pretence that they possess those powers of Government which (doubtful at best, even in those localities where they have some show of title) are without the least foundation on the banks of the Saskatchewan or Red Rivers.

In thus palliating the tenacity with which the Hudson Bay Company cling to their fictitious title, I may be accused of being their apologist, but I am so only to the extent that, at the present day their position has become a necessity, for, in so far as they have affected the rights of others, they have rendered themselves liable to the most serious consequences, should any party agrieved see fit to appeal to the legal tribunals of the country, and it is but natural to suppose that they will endeavor to maintain the fiction long enough to enable them to effect a compromise.

Any number of individuals might associate themselves together for mining, hunting or agriculture, say at Lake Nipissing or on Anticosti, and finding no legal tribunals there, or within their reach, they might establish a jurisdiction of their own and execute their judgments. Circumstances may be imagined in which such a course, if resulting from the necessity of their position, might be morally right though legally wrong, but nothing short of an act of indemnity could save them from the consequences if pursued at law, by those whose rights they had affected.

Such is exactly the position of the Hudson Bay Company at the Red River, and for the judgments they have rendered there they are undoubtedly amenable to be judged by the legally constituted tribunals of this country; and those whom they have condemned or punished, or whose rights or interests they have adjudicated upon can certainly obtain redress. And to this extent I would be their advocate, that in so far as their assumption of jurisdiction has been, in a manner, a necessity resulting from the acts of former years, the Legislature should pass an Act of indemnity to shield them from the consequences—the circumstances to be first investigated, however, by a commission appointed by the Government for that purpose.

It may seem presumptuous in me to put the case so strongly in opposition to the general view of their territorial rights, but it is not a matter of opinion, it is a matter of fact. I could have no hesitation to state as a fact, that the County of York and the District of Montreal are not portions of the Company's territory, but the fact that the Red River and Saskatchewan are not in their territory is just as strong and absolute, and the circumstance that the one happens to be better known than the other does not alter the fact in the one case more than the other.

But the generally received view of the subject is but of recent date and simply the result of the circumstance, that no one in particular has taken any interest in denying it. It is only since the union of the companies in 1821 that there has been no obstacle to the continuous imposition of the Company's views upon the public till they ultimately became rather unopposed than accepted; and in denying their title now (on the Saskatchewan and Red River) I am simply in accord with the highest authorities whose province it has been to treat the question judicially.

It must be remembered that the Company did not attempt to even enter upon these countries until 104 years after the date of their charter, viz.: in 1774, and that they then did so, not as taking possession under their charter, but only to participate in a traffic then in the hands of British subjects trading from Canada in virtue of the conquest or cession of the country, through which, and not in virtue of their charter, the Company also had, of course, a right to trade as British subjects.

A rivalry having been kept up for many years in the trade, and the absurd construction of the charter now contended for having been *invented*, the attempt to exercise the powers claimed was made by the Company through Lord Selkirk, first theoretically about the years 1811-12 and practically about 1814, by warning off the North-West Company and obstructing the channel of their trade, and the result was a great deal of strife and bloodshed. In the course of this strife various appeals were made to the Provincial and Imperial Governments and to the legal tribunals, and in every instance the decisions were directly or constructively adverse to the pretensions of the Hudson Bay Company.

In a despatch to the Governor General from Earl Bathurst, by order of His Royal Highness the Prince Regent, under date 6th February, 1817, I find the following instructions in relation to these events:

"You will also require, under similar penalties, the restitution of all forts, buildings, or trading stations, with the property which they contain, which may have been seized or taken possession of by either party, to the party who originally established or constructed the same, and who were possessed of them previous to the recent disputes between the two Companies.

"You will also require the removal of any blockade or impediment by which any party may have attempted to prevent or interrupt the free passage of traders or others of His Majesty's subjects or the natives of the country with their merchandize, furs, provisions, and other effects, throughout the lakes, rivers, roads and every other usual route or communication heretofore used for the purposes of the fur trade in the interior of North America, and the full and free permission for all persons to pursue their usual and accustomed trade without hindrance or molestation."

And in conclusion this object is again peremptorily insisted on, viz.: "the mutual restoration of all property captured during these disputes, and the freedom of trade and intercourse with the Indians, until the trials now pending can be brought to a judicial decision and the great question at issue with respect to the rights of the two Companies shall be definitely settled."

The trials then pending to which the above allusion has reference were those instituted by Lord Selkirk against the partners and employees of the North-West Company, who had resisted the pretensions of the Hudson Bay Company, and in consequence of which a battle was fought on the Frog Plains, at the Red River, in which some 20 of the Hudson Bay people were killed, including the "Governor," as they styled their chief officer. These trials were for murder (some of the parties as principals and some as accessories), for arson, robbery (stealing cannon), and other high misdemeanors, and were held in this city, then the Town of York, in October, 1818, and resulted in the acquittal of all the parties on all the charges, though it was not denied that some of them had been in the battle, in which, however, they contended that they were in the defence of their just rights.

These trials were held under the Canada Jurisdiction Act (43 Geo. III, cap. 138), by authority of a commission from Lower Canada, but the jurisdiction under that Act being questioned on the ground that the Frog Plains were in Upper Canada and therefore not in the territories affected by that Act, the court was so doubtful on the question of boundary that the charge to the jury directed that in case of finding the prisoners guilty, they should return a special verdict, setting forth that "they could not see from any evidence before them, what were the limits of Upper Canada." The Attorney General was unable to define these limits, but appealed to the court to decide, as they were "deducible from Treaties, Acts of Parliament, and Procla-



nations, &c.," and the judgment of the court was as above stated; the following passage occurring in the charge of the Chief Justice:

Report from minutes taken in court, page 287, Oct., 1818. "Mr. Attorney General has put in evidence the latitude and longitude of the Frog Plains, but he does not put in evidence whether this latitude and longitude be without or within the boundaries of Upper Canada, and *I do not know whether from 90° to 100° or 150° form the western limit of Upper Canada.*"

In other words, the court could not affirm that Upper Canada had any western limit on this side of the Pacific; and the court was right, its westerly limit never had been assigned, and absolute evidence, of the very nature which the Attorney

Description in Commissions to Governors. General (now Chief Justice, Sir J. B. Robinson) admitted would be proof upon the subject, existed, so far as to prove that the Province extended beyond the Lake of the Woods, without determining how far beyond, but it was not his duty to quote it as he was prosecuting for a conviction as directed by a special commission from Lower Canada under a particular Act. An acquittal, however, rendered any special verdict unnecessary, and the question was not, therefore, further tried on these cases.

I must remark, however, that the question raised was solely whether the scene of the outrage at Red River was in Canada or the Indian Territory, not whether it was in Canada or the Hudson Bay Company's Territory; the latter alternative was not even entertained, having been almost entirely ignored on the trials as too manifestly absurd to make any legal fight upon at all. In short, the case for the defence was based on a justification of resistance to the assumed authority of the Company, whose preposterous pretensions on the Red River with "Governors, Sheriffs, &c.," were treated with ridicule; without, however, detracting from the individuals, "Governor" Semple, who was killed, or his predecessor, McDonell, who were worthy of the highest respect, though, like many others, imposed upon in the first instance by the specious pretences of the Company and Lord Selkirk.

Other actions and trials took place in Upper Canada, all of which, so far as I have been able to trace them, were adverse to the Hudson Bay Company. In February, 1819, in this city, William Smith, Under Sheriff of the then Western District, obtained £500 damages against Lord Selkirk, then at the head of a large armed force, for resisting him in the execution of a writ of restitution founded upon a verdict obtained at Sandwich in 1816, and resistance, also, to a warrant for his Lordship's arrest.

At the same time Daniel McKenzie obtained £1,500 damages for forcible detention, &c., by Lord Selkirk.

Criminal proceedings were also instituted and a bill of indictment found against Lord Selkirk himself and the leaders of his party, for their illegal transactions in the western territories; but I have not yet been able to trace up the result of this case and no doubt much valuable information could be obtained by some one having more time than I have had to hunt up the records of these proceedings.

The latter trials, I believe, were in the ordinary course of procedure of Upper Canada, and not under the Special Act for the Indian Territories, &c., and the proceedings thus extended to transactions which occurred far within the territories drained by waters discharging into Lake Winnipeg.

Having shown the views of the judicial authorities of Upper Canada, I would advert for a moment to those of Lower Canada.

In May, 1818, Charles De Reinhard was tried at Quebec for murder committed in 1816 on the River Winnipeg, under the Canada Jurisdiction Act. Exception was taken to the jurisdiction of the Court on the ground that the locality was not in the Indian Territory, but within the limits of Upper Canada. The court overruled the objection and decided that the westerly boundary of Upper Canada was line on the meridian of 88° 50' west longitude from London. I hardly think that any surveyor, geographer or delineator of boundaries of any experience or scientific attainments would concur in that decision.

The question would be too long, however, to discuss now, and I shall only say that it was based on the assumption that, of the territory previously belonging to and acquired from France in 1763, only a part was organized as the Province of Quebec, and that the two Provinces of Canada, after the division, were confined to the same limits provided for the former by the Act of 1774. The court, the Attorney General and the counsel for the prisoner, alike concurred in the fact that the River Winnipeg was a part of the country previously belonging to France, and ceded by the Treaty of Paris, in 1763, and at no stage of the proceedings was the question of its being a part of the Hudson Bay Company's Territories for one moment entertained.

De Reinhard was found guilty and sentenced to death, but although the court refused to re-consider its decision, yet the reasoning of Messrs. Stewart and Vallière was so clear that the judges deemed it expedient that the execution should be delayed till the decision of the Imperial Government could be had upon the question of jurisdiction.

The actual reasons given by the Imperial Government I have not been able to get at; but I know that when the decision was given the prisoner was released, and that the question submitted was that of jurisdiction, as above stated.

I must here remark, however, that notwithstanding the able and convincing arguments of Messrs. Stewart and Vallière, they omitted one point which the court would have been obliged, by its own admissions, to have accepted as conclusive against the judgment it gave. The decision given was based upon the technical construction put by the court upon the actual wording of an Act of Parliament, but it was admitted (by the court) that the country to the west only "came into the possession of the British Crown at the Treaty of Paris, in 1763;" and it was also admitted that the King could, by "*an Act of Sovereign Authority*," have placed that country under the Government of Canada. It was merely denied that he did so, not asserted that he could not. The counsel for the prisoner did not chance to come upon the Commissions of the Governors, or they would have found that there had been such an "*Act of Sovereign Authority*," distinctly Lord Dorchester's Commission, 1783. describing that country to the west of the Lake of the Woods as attached to the Government of Canada, and the court, by its own admission, must have been bound by it.

I may also remark that the decision of the Court at Quebec would have made the westerly limit of Upper Canada a long way east of the United States boundary at Lake Superior, leaving out the shores of the lake (where we are now selling mining lands) and its westerly tributaries, and has therefore nothing in common with the boundary designated for us by the Hudson Bay Company, viz.:—the water-shed of the St. Lawrence, and for which *there is no earthly authority except themselves*.

On this head I must advert to one other authority which is of the highest importance at this moment, when troops are about to be sent to the Red River, and who, if they carry with them the erroneous views which, of late years, have been with some success imposed upon the public by the assiduous promulgation of the Company, may unfortunately be placed in a position of antagonism to the civil power. There were, indeed, some troops there not very many years ago, and no such evils, as might be apprehended now, resulted; but the circumstances are changed; the scenes of an earlier period may come back if the attempt be made wholly unsustained by law, to repress a legal right. If such should be the case, it would be unfortunate if Her Majesty's soldiers were found on the wrong side, acting against law, for the subject is now being so well discussed that the people will know their rights, and will appeal to the legal tribunals and the civil powers of the State to sustain them. Better that military rule prevailed entirely, for then the officers would know their duties and their responsibilities. If they go under the impression that they are to be subject to the supposed civil officers of a self-constituted government which has no legal existence, they may find themselves called upon to enforce behests which are not law, which are infractions of law; they may



be called upon to subdue resistance to illegal acts to which resistance is a duty and a right; and if, for acting on these behests, they are ultimately brought before the courts of justice, they will find that they have acted under those whose powers will be treated as a nullity, whose civil offices will be held a mockery. This has been so before; it may be so again, if due precaution be not observed; and I state it thus strongly now because the more it is known, the less will be the chance of its recurrence.

If proper civil officers, magistrates, &c., were appointed by His Excellency the Governor General, for the Red River country, to whom alone the troops could look in case of emergency, as vested with authority, the difficulty and danger would be obviated; for without this there is no authority in that country, by, through or in any person connected with the Hudson Bay Company, as such, to which any officer or soldier in Her Majesty's service would be justified in yielding obedience.

To revert to the authority upon this subject, I was about to quote; it will be remembered that during the troubles which formerly took place, upon special representations made by Lord Selkirk, that he was not safe in proceeding to the Red River settlement, some troops were sent with him, and the instructions given to them by order of His Excellency Sir Gordon Drummond, are so clear and decisive that no one can mistake their purport. They were as follows:—

ADJUTANT-GENERAL'S OFFICE,  
QUEBEC, 17th April, 1816.

SIR,—THE EARL OF SELKIRK having represented to the ADMINISTRATOR-IN-CHIEF, and Commanding General of the Forces that he has reason to apprehend that attempts may be made upon his life in the course of the journey through the Indian country which he is about to undertake, His Excellency has in consequence been pleased to grant his Lordship a military guard for his personal protection against assassination. This party which is to consist of two serjeants and twelve rank and file of the *regiment de Meuron*, is placed under your command, and I am commanded to convey to you the positive prohibition of His Excellency the Lieutenant-General commanding the Forces, against the employment of this force for any other purpose than the personal protection of the EARL OF SELKIRK. You are particularly ordered not to engage in yourself, or the party under your command, in any disputes which may occur betwixt the EARL OF SELKIRK and his engagés and employés, and those of the NORTH-WEST COMPANY, or to take any part or share in any affray which may arise out of such disputes.

By such an interference on your part, you would not only be disobeying your instructions, but acting in *direct opposition* to the *wishes and intentions* of the *Government* to the COUNTERNANCE, SUPPORT and PROTECTION of which EACH PARTY has an equal claim.

The EARL OF SELKIRK has engaged to furnish the party under your command with provisions during the time of your absence; you are on no occasion to separate from your party, but to return with his Lordship, and on no account to suffer yourself or any of your detachment to be left at any settlement or post in the Indian country.

These instructions are to be clearly explained to the non-commissioned officers and men in your party.

I have the honor to be, Sir,

Your most obedient, humble servant,

(Signed)

J. HARVEY,

Lt.-Col., D.A.G.

Lieutenant Graffenried, }  
De Meuron's Regiment. }

[The italics and capitals are the same as in the original.]

This is another emphatic declaration that the Government held the Hudson Bay Company and the Canadian traders as possessed of equal rights, and that His

Majesty's troops at least were not to be used against the one to sustain the ridiculous pretensions of the other.

Notwithstanding the stringency of these instructions, however, Lord Selkirk having a number of the disbanded De Meuron soldiers in his pay, it was difficult for the regulars to resist being led along with them, to enter upon the North West Company's property, &c., and which involved them in legal difficulties, after their return, from which it was not easy to extricate them.

I have confined myself in the foregoing remarks to the Red River and Saskatchewan countries, which were the principal scenes of the disputes which have heretofore called for action, and it will be seen that the imperial authorities, the military authorities, and the courts of justice have all ignored the pretensions of the Hudson Bay Company as regards those countries.

The great danger in renewing the Company's lease of the Indian Territories, however, would be that they might drop the pretence that the Red River, &c., is covered by their charter, and claim it as part of the Indian Territories, a plea which, though erroneous, might be more easily sustained by technicalities, inasmuch as some of the remote parts of Canada, perfectly understood to be such, have nevertheless sometimes been designated as the "Indian countries" in official documents.

I have not referred to the validity of the Company's charter, either to deny or admit it; I merely deny that it has effect on the countries I have spoken of.

In support of this I have quoted more recent authorities, but for a more particular investigation of their title, its extent and origin, I beg to refer to a report which I wrote for the Commissioner of Crown Lands, some months ago, the substance of which appears in the shape of a memorandum in the Return to an Address of the Honorable Legislative Assembly, dated 15th March, 1857, for certain papers connected with the Hudson Bay question. It embodies the views I have entertained for many years, and is the result of much careful study.

Have you made the early and present boundaries of Canada a particular subject of study; if so, state the result?

The early boundaries of Canada or New France included, I think, the whole of Hudson Bay, for I find all that part of the country granted to a trading Company by the King of France, in a charter somewhat similar, but forty-three years earlier, than the charter of the Hudson Bay Company. I find the country also confirmed by Treaty to France, at St. Germain's en Laye, thirty-eight years before the last named charter, but the investigation of this part of the subject is fully stated in the memorandum referred to.

I find that from the Treaty of Utrecht, in 1713, to the Treaty of Paris, in 1763, the boundaries between the French possessions in Canada and the British possessions in Hudson Bay were not defined. The lines claimed by both parties are distinctly laid down on the map lately prepared by Mr. Devine in the Crown Land Department. Both, it will be seen, give the Red River and the Saskatchewan to France, and the line laid down from British authorities is from those least favorable to French pretensions of that period. All the country south of that line is of course what was ceded by France, as Canada, in 1763, and was in her undisputed possession up to that time. There was never any westerly limit assigned to Canada either before or since the Treaty of Paris. The French claimed to the Pacific though they never explored the whole way across, which, however, the Canadians (British and French) were the first to effect after the treaty.

Some British authorities of a more recent date claimed under the Treaty of Utrecht from Hudson's Bay to latitude 49° as having been so determined by Commissioners; but no such decision was ever given. I have searched every book I could find upon the subject, and have communicated with those who have searched the best libraries of France and England with the same object, but no authority can be found or such authority.

What do you know of the soil and climate of the British territories north and west of Lake Superior to the Pacific?



I know the country in these respects in a general way, as well as I can know any country that I have never personally visited. A great deal of it is of the finest character, both with respect to soil and climate, but in such an extent there are of course some sterile, rocky and barren tracts. The immediate shores of Lake Superior are for the most part rock-bound, but a conviction I have long entertained, deduced from certain premises, has been sustained by recent proof, that an extensive tableland or flat country exists in the interior to the north. To the west, after crowning the height of land near the lake, there is a great deal of flat country. From the most westerly British point on Lake Superior to the Red River Settlement, the distance in an air line is 350 miles, and there is no reason to apprehend that the average difficulties of making a road the whole way are greater than are ordinarily met with in the interior of Canada.

Much of the distance, however, is navigable. From the lower end of the Lake of the Woods to the foot of Rainy Lake is navigable in one reach of 156 miles; thence through Rainy Lake, &c., there is a navigable reach of 77 miles (although some say there is a break, making 44 and 33 miles), thence there are 28 miles, making fine navigable reaches, the Winnipeg River being nearly as large as the Ottawa. From the last 28 miles the distance is about 115 miles to Lake Superior. If the road were made through this tract, the whole country would be easily accessible. There are navigable waters, however, a great part of the last named distance, though in smaller reaches; I have only given those on which steamers could be used whenever desirable. From the Lake of the Woods to Red River in a direct line, without going round by Lake Winnipeg, is said to be a very fine country, but it is not thoroughly explored.

The route above sketched is the nearest and the easiest to be made available for summer travel. It has an immense advantage in distance over the Minnesota route. Taking Detour on Lake Huron as a starting point common to both routes, we find the direct distance to be, from Detour to Pigeon Bay, 300, and from Pigeon Bay to Red River, say 356 miles, in all say 656 miles. By way of Minnesota the distances are, Detour to Chicago, 350 miles; Chicago to St. Paul's, 340 miles, and from St. Paul's to Fort Garry, 380 miles, making in all 1,070 miles, making a difference of 414 miles in favor of the Lake Superior route through our own territory. The above distances are given in air lines, and would, of course, be considerably increased in actual travel, but there is not the least reason to suppose that they would be more increased by the one route than by the other. Pigeon Bay, on Lake Superior, is equally accessible and rather less distant from Lake Huron than Chicago is; but, allowing these two points to be equally accessible from the east, when we turn to the west Fort Garry is 356 miles distant from our own port, and 720 miles distant, *via* St. Paul's, from the American. In other words, starting from Fort Garry it is about 30 miles farther to St. Paul's than to Pigeon Bay, and when you have got to St. Paul's you are about as far from Chicago as you were from Pigeon Bay before you started from the Red River.

To make an excellent waggon road, therefore, clear through from a British port on Lake Superior to Fort Garry, on Red River, allowance for curvatures bringing the distance up to about 400 miles, would take say £95,000. Such a road, at a cost of £240 per mile, would immediately transfer the trade from St. Paul's to Lake Superior, would speedily pour a large population into the country, and would likewise become settled throughout its entire length, with such occasional exceptions, no doubt, as usually occur on the average of road lines in the interior of Canada. This result is worth millions of money to the people and the trade of this country, and the outlay is comparatively insignificant. But it is not necessary to make even this outlay to attain the end desired. I have already shown 260 miles navigable on the route, in three or at most in four, separate reaches, the data for which I have taken from the actual survey made in 1826 under the Treaty of Ghent. The navigable parts are not, of course, in a straight line, but they lie very closely in the general direction of the route, and from £25,000 to £30,000 expended on the 115 miles from Lake Superior to the first navigable reach referred to might at once be said to open up the

territory. Gradual access might of course be had, at a still less cost, by commencing settlement with the ordinary class of free grant roads. The whole route might indeed be made accessible at once at the cost of a few thousand pounds, by clearing out the portages (over which artillery and military stores have been taken ere now) which have fallen into disuse, and even this would be beneficial, as it would create trade and travel enough to induce a more general knowledge of the capabilities of the country. I need only add on this head that my views of this country are derived personally from some who have seen it, and from the writings of others, and have recently been confirmed by the evidence of Sir George Simpson and Dr. Rea, who, while manifesting a strong desire to condemn, have afforded the most convincing proofs of the practicability of rendering this route available. They both admit that from the high lands near Lake Superior westward to Lake Winnipeg, the country generally is of a flat character.

The next point is, that from the impracticable nature of the north shore of Lake Superior, it can only be a summer route, and that it is not therefore desirable to have a British population in these countries to which access could only be had, during winter, through the United States. I admit the inconvenience, but what becomes of Canada altogether in winter? The entire intercourse between it and England is through the States at that season. But, it may be said, there is another route possible from Halifax to Quebec. Is there, then, no other route possible to Red River? Fortunately, Dr. Rae has recently thrown some very valuable light upon the subject. He says that in the interior, behind the rock-bound shores of the upper part of Lake Superior, the country is low and swampy, having found it rough and broken whenever he got nearer the lake. "*Swampy*," it must be observed, as used in Canada, conveys an erroneous impression to English readers, who do not know that what is called a "swamp" in Canada is a level tract, with a thicket growing upon it, which keeps the ground damp by keeping out the sun's rays; that there is generally from six to eighteen inches of rich vegetable mould on the surface, with a pretty stiff clay bottom; that, in short, a Canadian swamp is about the best ground that nature ever made for a railway track. Dr. Rae has not been far enough back at the lower end of Lake Superior to reach such a country, but we have the explorations of gentlemen connected with the lumber trade, a considerable distance into the interior westward from Lake Temiscamingue, where a very fine, level hardwood country is found; and from other good authorities I have learned that the country continues of a flat character westward to the localities described as such by Dr. Rae, and that the snow does not lie quite so deep as in Lower Canada.

I shall not assert anything positive of a route which has not been sufficiently explored or reported upon, but from all that is known there is no rational ground for supposing that the route would be in the least more difficult in its natural features than between Quebec and the Lower Provinces. Such a route is of no immediate necessity, however, until a considerable population shall have grown up to the west.

Having dealt thus fully with the question of the accessibility of the country, I shall be brief in relation to its soil and climate, which are so generally known as to render a refutation of the erroneous statements still sometimes made by interested parties, or those who are swayed by them, a superfluity.

I have had some communication with parties in England who take a deep interest in the subject, and have seen a great part of the evidence taken by the Committee of the House of Commons, before which it has lately been undergoing investigation. The evidence given on that occasion, on behalf of the Hudson Bay Company, must ultimately become a subject of deep regret to those whose names are associated with it, because of its entire want of truthfulness. The evidence before the Committee of the Commons was not complete at this time, but I was in communication with parties who kept me informed. But it will soon, I presume, become public, and I need not now anticipate the reception it must then meet with.

I will only advert to a few points, to elucidate my remarks upon the soil and climate of the country. Sir George Simpson admits—what everybody knows—that the climate on the same parallel of latitude, improves to the west. I am aware that



wheat grown in eastern Canada, north of the 48th parallel of latitude, obtained honorable mention, as ranking next after the prize wheat, at the world's exhibition in Paris. The Rainy Lake River is also between the 48th and 49th parallels of latitude, but there, Sir George tells the Committee, that the ground, behind the immediate bank of the river, is permanently frozen. Thus between the same parallels of latitude we find one point on the east at which we know that the best of wheat can be grown, and another point, thirteen miles due west of it, where, while he says the climate improves by westing, Sir George informs the Committee that we have reached the regions of perpetual frost.

Colonel Lefroy also says that the climate ameliorates to the westward, but and that in the country from Lake Superior west to the Rocky Mountains, both soil yet, climate are adverse to settlement. His proofs are curious, however; he says: wheat has been raised with success at Fort Cumberland. Now, Fort Cumberland is upwards of three hundred miles due north of the boundary. Following the same meridian due south, therefore, there must be one of the finest wheat-growing countries imaginable; at least a due north and south line of upwards of three hundred miles, in this part of the world, would reach from a very fine to a very indifferent wheat-growing country. He says also that horses live out and find their own food all winter, on the north branch of the Saskatchewan, and that the buffaloes get very fat in winter. He says that barley is the only cereal that can be grown with success at Fort Simpson; but this being about 62° north latitude (he mistakes in calling it 58°), the climate on the same meridian at 49° must be magnificent. The fact is, that those who have given evidence for the Company, speak of the territories from Lake Superior to the Rocky Mountains, and from latitude 49° to the Polar regions, as a whole, and thus it is that Fort Simpson is dragged in to prove the unfitness of the country generally for agriculture; whereas the fact that nothing better than barley can be grown at Archangel might as well be adduced to prove that wheat would not succeed in Poland, or the farthest portions of Germany; or the inhospitable climate of Ljpland made an argument against the cultivation of the British Islands. Colonel Lefroy indeed condemns *both* soil and climate, and attributes the success of agriculture at Fort Simpson to the fact of the farm being on an island formed by an alluvial deposit. If then the accident of an island of alluvial soil in latitude 62° found a climate genial enough to make "*farming unusually successful*," with "*very fine timber*," though "*the largest trees seldom exceed three feet in diameter*," no language of mine could convey a stronger disproof of the evidence given by the same gentleman against the climate as a whole, including 13 degrees further south, and the same proximity to the Pacific as Fort Simpson.

Respecting my own opinions upon the subject, from having read what has been written by indifferent parties upon it, I think the nature of the climate is just as well established as that of the climate of Europe and Asia is. It is affected by the same causes precisely, varied in a greater or less degree, in different localities by circumstances peculiar to each.

The west side of the Continent of Europe and Asia is warmer on the same parallel of latitude than the east side, because the west has an ocean to the *windward* of it, the prevailing winds being westerly.

The cause and effect are precisely the same on the Continent of America, only they operate in a somewhat greater degree from its having a larger and warmer ocean to the windward of it, and colder sea to chill its eastern shores.

The greater coldness of the North Atlantic, on the eastern shores of America, is caused by the mass of ice that annually drives southward through Davis' Straits. I believe there are no such icebergs reach the same latitudes in the Pacific.

The isothermal lines of equal temperature run farther north therefore on the west coast of America on the Pacific, than on the west coast of Europe on the Atlantic.

The observations upon which this fact is based, are concurred in by all disinterested authorities; against such testimony the evidence of the few interested in the Hudson Bay Company, or their friends, is entirely valueless.

Assuming, however, that equal latitude gives only the same mean temperature on the west coast of America, as on the west coast of Europe, we find that some of the finest countries in the world lie between the 49th and 60th parallels, including the whole of the British Islands.

The 60th parallel of north latitude passes through Christiania, in Norway, a little north of Stockholm, the capital of Sweden, and through St. Petersburg; but in following the same parallel through Europe and Asia we come out in the most northerly parts of Kamtschatka, which cannot be said to be habitable in the ordinary sense.

There is no barrier in climate, therefore, to a St. Petersburg being at latitude 60° north, on the west coast of America, any more than on an inlet of the west coast of Europe, although on following the same parallel eastward across the continent to the shores of Hudson Bay, or the confluence of Hudson and Davis Straits, we come to countries whose sterile shores and wintry skies forbid the hope of their ever becoming the homes of civilized men, except as hunters and fishers.

The 49th parallel of north latitude passes nearly a degree south of the southernmost point of England, through the environs of Paris, through the southern Provinces of Germany, and less than a degree north of Vienna.

There is no reason therefore, as regards climate, why the lower course of the Fraser River, or the upper course of the Columbia, in British territory, and in the same latitudes, should not rival the banks of the Rhine, the Meuse, or the Moselle; there is no such reason why the valleys of the Unjiga, the Elk, the Saskatchewan, the Red River and the Assiniboine should not yield their golden harvests as rich as those of the Weser, the Elbe, the Oder or the Vistula.

The geographical affinities between these localities, in relation to those influences by which climate is affected, are indeed such that it would require some very strong facts, sustained by a concurrence of all the most credible testimony, to prove that the above comparison is too favorable to the places I have named on this continent. The facts established, however, by all disinterested authorities, prove the reverse.

What, then, is this immense region, equal in area and climate to many of the most powerful kingdoms of the Old World, composed of? Bare rock, snow-clad mountains, and sandy plains or swamps and morasses, are what the friends of the Hudson Bay Company would have us believe. We find, however, that the construction of this part of the globe is very much like the rest of the world, varying from the primitive to the secondary and tertiary formations, with limestone, coal, &c., in abundance; and to assert that a country of such formation, and with such a climate, is unfit for the abode of man, is simply to assert that the laws of nature are reversed in regard to it.

The Company and their friends, however, try to prove too much; according to Sir George Simpson, immediately to the south of the 49th parallel on the Pacific coast, there is a beautiful country—that being United States territory—and immediately to the north of that parallel the country is all rock and mountain, “quite unfit for colonization,”—that being British territory. Indeed, according to him, the 49th parallel forms a sort of natural wall across the continent; that is, not quite across it, for a peculiar feature in his evidence is that the regions of permanent frost get down south of it at one point, and not the least strange part of this phenomenon is that it just occurs at that point where the parallel of 49° ceases to be the boundary, and the British territory also gets to the south of it, viz: at Rainy Lake.

Animal life, however, abounds in the country; the buffalo, literally “swarm,” even according to the evidence submitted by the Company.

The Rocky Mountains have also been referred to as affecting the climate injuriously by the influence of the perpetual snow upon their summits. But the fact that the snow-clad mountains of other countries do not prevent the valleys from being habitable is a sufficient argument against this; indeed it is questionable whether the increased reflection of the sun's rays, concentrating in the valleys below, does not



more than compensate for the cold communicated from the snow upon their summits.

I may remark, in conclusion, that the Lake Superior route to the Red River, was not always such a solitude as it is now. The strife between the Companies was deplorable, in many respects, but the disorder and anarchy could easily have been subdued--indeed was subdued--and could have been so still more readily, had the facilities for access been as great then as now. But it must be remembered that canoe navigation at that time commenced at Lachine, and yet even then, there was a great highway, for there was money to be made, and a land worth fighting for lay in the distance.

The following extract from a work, published by a gentleman who had come across from the Pacific, represents the scene on his arrival at Fort William, on August 16th, 1817 :

"On enquiry, I ascertained that the aggregate number of those persons in and about the establishment, was composed of natives of the following countries, viz: England, Ireland, Scotland, France, Germany, Italy, Denmark, Sweden, Holland, Switzerland, United States of America, the Gold Coast of Africa, the Sandwich Islands, Bengal, Canada, with various tribes of Indians, and a mixed progeny of Creoles or half-breeds. What a strange medley! Here were assembled on the shores of this inland sea, Episcopalians, Presbyterians, Methodists, Sun-worshippers, men from all parts of the world, and whose creeds were "wide as the poles asunder," united in one common object, and bowing down before the same idol."

Ross Cox,  
London, 1831.

These were the features of an embryo city—in strange contrast with the desolate and decaying loneliness which the blight of an illegal monopoly has thrown over it to-day—the entrepôt of the trade of half a continent which, but for that blight would, at this day, have helped to enrich the Canadian people, to fill their canals, and to swell the traffic on their railroads, and it depends upon the action to be taken now how long the incubus is to last.

If I have said anything which may seem harsh or uncalled for of any one connected with the Hudson Bay Company, I regret it. I have given my answers hurriedly, and may have used expressions I would recall, as I have had no motive but to show the truth, though I have desired to speak it strongly for the good of my country, and in the interest of humanity.

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CROWN GRANT to the Hudson Bay Company of the exclusive trade with the Indians in certain parts of North America, for a further term of twenty-one years, and upon the surrender of a former grant.

VICTORIA R.

(L. S.) VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To all whom these Presents shall come, greeting.

WHEREAS by an Act passed in the Session of Parliament holden in the first and second year of the reign of his late Majesty King George the Fourth, intituled "An Act for regulating the Fur Trade, and establishing a Criminal and Civil Jurisdiction "within certain parts of North America," it was amongst other things enacted, that from and after the passing of the said Act, it should be lawful for His said Majesty, his heirs or successors, to make grants, or give His or their Royal License, under the hand and seal of one of His or their Principal Secretaries of State, to any body corporate or company, or person or persons, of or for the exclusive privilege of trading

with the Indians in all such parts of North America as should be specified in any such grants or licenses respectively, not being part of the lands and territories theretofore granted to the Governor and Company of Adventurers of England trading to Hudson Bay, and not being part of any of our Provinces in North America, or of any lands or territories belonging to the United States of America, and that all such grants and licenses should be good, valid and effectual for the purpose of securing to all such bodies corporate, or companies or persons, the sole and exclusive privilege of trading with the Indians in all such parts of North America (except as hereinafter excepted) as should be specified in such grants or licenses, anything contained in any Act or Acts of Parliament, or any law to the contrary notwithstanding; and it was further enacted, that no such grant or license made or given by His said Majesty, His heirs or successors, of any such exclusive privileges of trading with the Indians in such parts of North America as aforesaid, should be made or given for any longer period than 21 years, and that no rent should be required or demanded for or in respect of any such grant or license, or any privileges given thereby under the provisions of the said Act for the first period of 21 years; and it was further enacted, that from and after the passing of the said Act, the Governor and Company of Adventurers trading to Hudson Bay, and every body corporate and company and person to whom any such grant or license should be made or given as aforesaid, should respectively keep accurate registers of all persons in their employ in any parts of North America, and should once in each year return to the Principal Secretaries of State accurate duplicates of such registers, and should also enter into such security as should be required for the due execution of all processes criminal and civil, as well within the territories included within any such grant, as within those granted by charter to the Governor and Company of Adventurers of England trading to Hudson Bay, and for the producing or delivering into safe custody, for the purpose of trial, all persons in their employ or acting under their authority, who should be charged with any criminal offence, and also for the due and faithful observance of all such rules, regulations and stipulations as should be contained in any such grant or license, either for gradually diminishing and ultimately preventing the sale or distribution of spirituous liquors to the Indians, or for promoting their moral and religious improvement, or for any other object which might be deemed necessary for the remedy or prevention of any other evils which had hitherto been found to exist: And whereas it was in the said Act recited, that by a convention entered into between His said late Majesty and the United States of America, it was stipulated and agreed, that every country on the north-west coasts of America to the westward of the Stony Mountains should be free and open to the citizens and subjects of the two powers for the term of ten years from the date of the signature of that convention; and it was therefore enacted, that nothing in the said Act contained should be deemed or construed to authorize any body corporate, company or person to whom His said Majesty might, under the provisions of the said Act, make or grant or give a license of exclusive trade with the Indians in such parts of North America as aforesaid, to claim or exercise any such exclusive trade within the limits specified in the said article, to the prejudice or exclusion of any citizens of the said United States of America who might be engaged in the said trade; with a proviso, that no British subject should trade with the Indians within such limits without such grant or license as was by the said Act required.

And whereas by an instrument under the hand and seal of the Right Honorable Earl Bathurst, then one of His said late Majesty's Secretaries of State, and dated the 11th day of December, 1821, after reciting therein, as or to the effect aforesaid, and so reciting that the said Governor and Company of Adventurers of England trading to Hudson Bay, and certain associations of persons trading under the name of "The North-West Company of Montreal," had respectively extended the fur trade over many parts of North America which had not been before explored, and that the competition in the said trade had been found, for some years past, to be productive of great inconvenience and loss, not only to the said Company and associations, but to the said trade in general, and also of great injury to



the native Indians and of other persons, His said Majesty's subjects; and that the said Governor and Company of Adventurers trading to Hudson Bay; and William M'Gillivray, of Montreal, in the Province of Lower Canada, Esquire; Simon M'Gillivray, of Suffolk-lane, in the City of London, merchant; and Edward Ellice, of Spring-gardens, in the County of Middlesex, Esquire; had represented to His said Majesty that they had entered into an agreement, on the 26th day of March last, for putting an end to the said competition, and carrying on the said trade for twenty one years, commencing with the outfit of 1821, and ending with the returns of the outfit of 1841, to be carried on in the name of the said Governor and Company exclusively, and that the said Governor and Company, and William M'Gillivray, Simon M'Gillivray and Edward Ellice had humbly besought His said late Majesty to make a grant and give His Royal License to them jointly of and for the exclusive privilege of trading with the Indians in North America, under the restrictions and upon the terms and conditions specified in the said recited Act: His said late Majesty, being desirous of encouraging the said trade, and remedying the evils which had arisen from the competition which had theretofore existed therein, did give and grant his Royal License, under the hand and seal of one of his Principal Secretaries of State, to the said Governor and Company, and William M'Gillivray, Simon M'Gillivray and Edward Ellice, for the exclusive privilege of trading with the Indians in all such parts of North America to the northward and to the westward of the said lands and territories belonging to the United States of America, as should not form part of any of His said Majesty's Provinces in North America, or of any lands or territories belonging to the said United States of America, or to any European Government, state or power; and His said late Majesty did also give and grant and secure to the said Governor and Company, and William M'Gillivray, Simon M'Gillivray and Edward Ellice, the sole and exclusive privilege, for the full period of 21 years, from the date of that grant, of trading with the Indians in all such parts of North America as aforesaid (except as thereinafter excepted), and did thereby declare that no rent should be required or demanded for or in respect of that grant and license, or any privileges given thereby for said period of 21 years, but that the said Governor and Company of Adventurers trading to Hudson Bay, and the said William M'Gillivray, Simon M'Gillivray and Edward Ellice, should, during the period of that grant and license, keep accurate registers of all persons in their employ in any parts of North America, and should once in each year return to His said Majesty's Secretary of State accurate duplicates of such registers, and enter into and give security to His said Majesty, his heirs and successors, in the penal sum of £5,000 for ensuring, as far as in them might lay, or as they could by their authority over the servants and persons in their employ, the due execution of all criminal processes, and of every civil process in any suit where the matter in dispute shall exceed £200, by the officers and persons legally empowered to execute such processes within all the territories included in that grant, and for the producing or delivering into custody for purposes of trial all persons in their employ or acting under their authority within the said territories, who should be charged with any criminal offence; and His said Majesty did thereby require that the said Governor and Company, and William M'Gillivray, Simon M'Gillivray and Edward Ellice, should, as soon as the same could be conveniently done, make and submit for His said Majesty's consideration and approval, such rules and regulations for the management and carrying on of the said fur trade with the Indians, and the conduct of the persons employed by them therein, as might appear to His said Majesty to be effectual for diminishing or preventing the sale or distribution of spirituous liquors to the Indians, and for promoting their moral and religious improvement; and His said Majesty did thereby declare, that nothing in that grant contained should be deemed or construed to authorize the said Governor and Company, and William M'Gillivray, Simon M'Gillivray and Edward Ellice, or any persons in their employ, to claim or exercise any trade with the Indians on the north-west coast of America, to the westward of the Stony Mountains, to the prejudice or exclusion of any citizens of the United States of America who might be engaged in the said trade; and providing also by the now reciting grant, that no British subjects

other than and except the said Governor and Company, and the said William M'Gillivray, Simon M'Gillivray and Edward Ellice, and the persons authorized to carry on exclusive trade by them on grant, should trade with the Indians within such limits during the period of that grant :

And whereas the said Governor and Company have acquired to themselves all the rights and interests of the said William M'Gillivray, Simon M'Gillivray and Edward Ellice, under the said recited grant, and the said Governor and Company having humbly besought us to accept a surrender of the said grant, and in consideration thereof to make a grant to them, and give to them our Royal License and authority of, and for the like exclusive privilege of trading with the Indians in North America, for the like period, and upon similar terms and conditions to those specified and referred to in the said recited grant. Now, know ye, that in consideration of the surrender made to us of the said recited grant, and being desirous of encouraging the said trade, and of preventing as much as possible a recurrence of the evils mentioned or referred to in the said recited grant; as also in consideration of the yearly rent hereinafter reserved to us: We do hereby grant and give our license, under the hand and seal of one of our principal Secretaries of State, to the said Governor and Company, and their successors, for the exclusive privilege of trading with the Indians in all such parts of North America, to the northward and to the westward of the lands and territories belonging to the United States of America, as shall not form part of any of our provinces in North America, or of any lands or territories belonging to the said United States of America, or to any European government, state or power, but subject nevertheless as hereinafter mentioned: And we do by these presents give, grant and secure to the said Governor and Company, and their successors, the sole and exclusive privilege, for the full period of 21 years from the date of this our grant, of trading with the Indians in all such parts of North America, as aforesaid (except as hereinafter mentioned): And we do hereby declare, that no rent shall be required or demanded for or in respect of this our grant and license, or any privileges given thereby, for the first four years, of the said term of 21 years; and we do hereby reserve to ourselves, our heirs and successors, for the remainder of the said term of 21 years, the yearly rent or sum of 5s. to be paid by the said Governor and Company, or their successors, on the first day of June in every year, into our Exchequer, on the account of us, our heirs and successors; and we do hereby declare, that the said Governor and Company, and their successors, shall, during the period of this our grant and license, keep accurate registers of all persons in their employ in any parts of North America, and shall once in each year return to our Secretary or State accurate duplicates of such registers; and shall also enter into and give security to us, our heirs and successors, in the penal sum of 5,000*l.*, for ensuring, as far as in them may lie, or as they can by their authority over the servants and persons in their employ, the due execution of all criminal and civil processes by the officers and persons legally empowered to execute such processes within all the territories included in this our grant, and for the producing or delivering into custody for the purposes of trial all persons in their employ or acting under their authority within the said territories who shall be charged with any criminal offence; and we do also hereby require, that the said Governor and Company, and their successors, shall, as soon as the same can be conveniently done, make and submit for our consideration and approval such rules and regulations for the management and carrying on the said fur trade with the Indians, and the conduct of the persons employed by them therein, as may appear to us to be effectual for diminishing or preventing the sale or distribution of spirituous liquors to the Indians, and for promoting their moral and religious improvement; but we do hereby declare, that nothing in this, our grant, contained, shall be deemed or construed to authorize the said Governor and Company, or their successors, or any persons in their employ, to claim or exercise any trade with the Indians on the North-west coast of America to the westward of the Stony Mountains, to the prejudice or exclusion of any of the subjects of any foreign states, who, under or by force of any convention for the time being between us and such foreign states, res-



pectively, may be entitled to, and shall be engaged in the same trade; provided, nevertheless, and we do hereby declare our pleasure to be, that nothing herein contained shall extend or be construed to prevent the establishment by us, our heirs or successors, within the territories aforesaid, or any of them, of any colony or colonies, province or provinces, or for annexing any part of the aforesaid territories to any existing colony or colonies to us, in right of our Imperial Crown, belonging, or for constituting any such form of civil government as to us may seem meet, within any such colony or colonies, province or provinces:

And we do hereby reserve to us, our heirs and successors, full power and authority to revoke these presents, or any part thereof, in so far as the same may embrace or extend to any of the territories aforesaid, which may hereafter be comprised within any colony or colonies, province or provinces as aforesaid:

It being, nevertheless, hereby declared, that no British subjects other than, and except the said Governor and Company, and their successors, and the persons authorized to carry on exclusive trade by them, shall trade with the Indians during the period of this our grant within the limits aforesaid, or within that part thereof which shall not be comprised within any such colony or province aforesaid.

Given at our Court at Buckingham Palace, 30th day of May, 1838.

By Her Majesty's command.

[L. S.]

(Signed)

GLENELG.

COVENANT by the Hudson Bay Company for performance of Conditions and Reservations contained in the Crown Grant of even date.—(Dated 30th May, 1838.)

Whereas, Her Majesty hath, by an instrument under the hand and seal of the Secretary of State, the Right Honorable Charles Lord Glenelg, bearing even date herewith, granted and given Her Royal License to us, the Governor and Company of Adventurers of England, trading into Hudson Bay, and our successors, the exclusive privilege of trading with the Indians in all such parts of North America to the northward and to the westward of the lands and territories belonging to the United States of America as shall not form part of any of Her Majesty's provinces in North America, or of any lands or territories belonging to the United States of America, or to any European government, state or power, and hath secured to us, the said Governor and Company, and our successors, the sole and exclusive privilege for the full period of 21 years from the date of the said grant, of trading with the Indians in all such parts of North America as aforesaid (except and with such restrictions as thereafter excepted), and hath thereby declared that no rent shall be required or demanded for or in respect of the said grant or license, or any privileges given thereby, for the first four years of the said term of 21 years, and hath thereby reserved to Her Majesty, her heirs and successors, for the remainder of the said period of 21 years the yearly rent of 5s., to be paid by us, the said Governor and Company, and our successors, on the 1st day of June in every year, into Her Majesty's Exchequer, on account of Her Majesty, her heirs and successors: We, therefore, the said Governor and Company of Adventurers of England trading into Hudson Bay do hereby covenant and bind ourselves and our successors, that we and they shall yearly and every year, and on every 1st day of June, from and after the expiration of the first four years of the said term of 21 years, and thenceforth during the continuance of the said grant and license, pay or cause to be paid the said yearly rent of 5s. into Her Majesty's Exchequer, and on account of Her Majesty, her heirs and successors, and that we and our successors shall, during the period of the said grant and license keep accurate registers of all persons employed by us or our successors in any parts of North America, and shall once in each year return to Her Majesty's Secretary of State accurate duplicates of such registers; and we, the said Governor and Company, do hereby bind ourselves and our successors in the penal sum of 5,000l. that we will, as far as in us may lie, ensure the due execution of all criminal and civil pro-

cesses by the officers and persons legally empowered to execute such process within all the territories, for the time being, included in the said grant, and for the producing or delivering into safe custody for the purpose of trial of any person in our employ or acting under our authority within the said territories who may be charged with any criminal offence; and we do also hereby covenant that we will, as soon as the same can be conveniently done, make and submit to the consideration and approval of Her Majesty such rules and regulations for the management and carrying on the said fur trade, and the conduct of the persons employed by us therein, as have appeared or may appear to us to be most effectual for gradually diminishing and ultimately preventing the sale or distribution of spirituous liquors to the Indians, and for promoting their moral and religious improvement. Witness the seal of the said Company, the 30th day of May, 1838.

By Order of the Governor and Committee.

[L. S.]

(Signed)

W. G. SMITH, *Assistant-Secretary.*

Sealed under the common seal of the within-mentioned Governor and Company, and delivered by William Gregory Smith, their Assistant-Secretary, pursuant to their order and appointment, being first duly stamped in the presence of

(Signed)

THOMAS CROSSE,  
*Threadneedle Street, Solicitor.*

## 12.—RESOLUTIONS

To be moved by Mr. Dawson for an Address to Her Majesty, on the subject of the North-Western parts of this Province, the Indian Territories and the Hudson Bay Company.

That it be *Resolved*:—

1. That Canada, or New France, as originally known and recognized by European nations, had no limit towards the north, except the Frozen Sea, and no limit towards the west except the Pacific Ocean.

2. That a charter was granted by King Charles the Second, of England in 1670, to certain parties as "The Merchants, Adventurers of England, trading to Hudson Bay," which—although neither the grantor, nor the British people, knew anything, at that time, of the interior of the country about Hudson Bay—nevertheless, precluded the Company from entering upon the possessions of France; the charter thus bearing upon its face a doubt of the extent, or indeed the existence of the title it professed to convey, and a knowledge of the fact that the right to the country even on the shores of Hudson Bay (which only was then known to England) was, in whole or in part, vested in France.

3. That from the first moment the intrusion of the Hudson Bay Company became known to France, or to the Canadian authorities of that day, it was forcibly, and for the most part successfully resisted, though in a time of peace between Great Britain and France.

4. That by the Treaty of Peace concluded at Ryswick, in 1697, between Great Britain and France, most of the places situate on Hudson Bay were recognized as belonging to France, while the claims of the two nations to the remaining places were to be determined by Commissioners respectively appointed for that purpose, who, however, never met for the object contemplated.

5. That by the Treaty of Peace concluded at Utrecht, in 1713, the whole of Hudson Bay (saving the rights of the French occupants down to that period) was ceded by France to Great Britain, but without defined limits, which were also to be determined by Commissioners, who, however, in like manner, never met for the purpose.



6. That the extent of the actual possession by each of the two nations affords, therefore, for the next fifty years, the true basis of their respective rights; unaffected by the various propositions, not based upon the treaty, but conventionally made or rejected by the one or the other.

7. That during the said period the possession of Great Britain, through the medium of the Hudson Bay Company, was confined to the shores of Hudson Bay, or extended a very short distance inland, while France was in possession of the interior countries to the south and west, including the Red River, Lake Winnipeg, the Saskatchewan, &c.

8. That by the Treaty of Paris, in 1763, Canada was ceded by France, *as then possessed by her*, to Great Britain, reserving to the French inhabitants all the rights and privileges of British subjects;—a provision made specially applicable to the Western Territories (then the great seat of the fur trade) by the capitulation of Montreal.

9. That Canadians, alike of British and French origin, continued the fur trade on a large and increasing scale, from 1763 to 1821, by the Ottawa, Lake Superior, the Saskatchewan, &c., west to the Pacific Ocean, and by the McKenzie River north to the North Sea.

10. That, in 1774, the Hudson Bay Company, exercising the undoubted right of British subjects, also entered upon the Saskatchewan and other parts of the Canadian territory, ceded by the Treaty of Paris, and carried on the fur trade there, though on a lesser scale than the North-West Company of Canada.

11. That, about the year 1812, the Hudson Bay Company, under the auspices of the Earl of Selkirk, set up the pretence that the countries on the Red River, the Saskatchewan, &c., and the jurisdiction thereof, belonged to them in virtue of their charter of 1670, and attempted practically to enforce this view by the expulsion of the North-West Company, which, however, they failed to effect, and in the attempt to do which the decisions of the Imperial and Canadian authorities were uniformly adverse to their pretensions.

12. That after a protracted struggle between the two Companies, they united, in 1821, and obtained a joint lease from the Imperial Government of the "Indian Territories."

13. That under this lease the two Companies—uniting upon the policy of the Hudson Bay Company—have since carried their trade through Hudson Bay, allowing the cheaper and more advantageous route by the St. Lawrence to fall into disuse, to the serious detriment of the resources of Canada, to which the fur trade had always been a source of great wealth.

14. That the said "Indian Territories" being without any specific territorial designation, the Company have taken advantage of this circumstance to disseminate such views as were most suitable to their own objects,—publishing maps, and creating territorial divisions, *upon paper*, alike inconsistent with all authority, contrary to historical facts, adverse to geographical association, and even in direct contradiction to the terms of the Statute under which their lease is held; and by these means they have succeeded in imposing upon the people of Canada so as to exclude them from a lucrative trade which, in fact, there is no lease, charter or law to prevent them from prosecuting.

15. That, therefore, the Hudson Bay Company under their charter (in itself held by eminent jurists to be invalid and unconstitutional—void, also, as this House believes it to be, on the ground that the countries it professes to grant, belonged, at that period to France—) cannot, by virtue thereof, in any event, claim the interior countries on Lake Winnipeg and the Saskatchewan; and under their lease of the Indian Territories can claim the exclusive trade of such countries only as they may prove to be no part of Canada.

16. That this House maintains the right of the people of this Province to enter upon and freely to trade in that part of Canada, or Nouvelle France as originally known, on Hudson Bay, ceded by France to Great Britain, in 1713; and independently of the ownership thereof having been in France previous to 1670, denies the

existence of any constitutional restriction to preclude them from enjoying the rights of British subjects in that or any other British territory

17. That, by the Treaty of Paris, the Mississippi necessarily became the westerly boundary of the then southerly part of Canada (now part of the United States), because France retained the west bank of that river from its source downwards; but the territory lying north of the source of the Mississippi—thence west, forming the northerly boundary of Louisiana—previously possessed by France, and so ceded by the said treaty, this House claims (save in so far as it has since been relinquished to the United States) as an integral part of Canada, without any westerly limit except the Pacific Ocean.

That a Joint Address of the two Houses of Parliament be presented to Her Majesty, founded upon the above Resolutions, and praying that in consideration of the injurious consequences to the trade and general interests of this Province resulting from the indefinable nature of the "Indian Territories," under cover of which the Lessees have been enabled to create a monopoly in localities not legally affected by their lease of the said territories, Her Majesty may be graciously pleased to refuse any renewal of such lease to the Hudson Bay Company: And further, that Her Majesty may be pleased to sanction no Act by which the existing territorial rights or jurisdiction of this Province would be affected.

### 13.—DOCUMENTS AND PAPERS RELATING TO THE CLAIMS OF THE HUDSON BAY COMPANY.

*To the Eight Honorable the Lords Commissioners of Trade and Plantations.*

The Memorandum of the Governor and Company of Adventurers of England trading into Hudson Bay.

That for avoiding all disputes and differences that may in time to come arise between the said Company and French, settled in Canada, they humbly represent and conceive it necessary:

That no wood-runners, either French or Indians, or any other person whatsoever, be permitted to travel, or seek for trade, beyond the limits hereinafter mentioned.

That the said limits begin from the island called Grimington's Island, or Cape Perdix, in the latitude of  $58\frac{1}{2}$  north, which they desire may be the boundary between the English and French, on the Coast of Labrador, towards Rupert's Land, on the east main, and Nova Britannia on the French side, and that no French ship, barque, boat, or vessel whatsoever, shall pass to the northward at Cape Perdix, or Grimington's Island, toward or into the Straits or Bay of Hudson, on any pretence whatever.

That a line be supposed to pass to the south-westward of the said Island of Grimington, or Cape Perdix, to the great Lake Miskosinke, alias Mistoveny, dividing the same into two parts (as in the map now delivered), and that the French, nor any others employed by them, shall come to the north or north-westward of the said lake, or supposed line, by land or water, on or through any rivers, lakes, or countries, to trade, or erect any forts or settlements whatsoever; and the English, on the contrary, not to pass the said supposed line either to the southward or eastward.

That the French be likewise obliged to quit, surrender, and deliver up to the English, upon demand, York Fort (by them called Bourbon), undemolished; together with all forts, factories, settlements, and buildings whatsoever, taken from the English, or since erected, or built by the French, with all the artillery and ammunition, in the condition they are now in; together with all other places they are possessed of within the limits aforesaid, or within the Bay and Straits of Hudson.

These limits being first settled and adjusted, the Company are willing to refer their losses and damages formerly sustained by the French in time of peace to the consideration of Commissioners to be appointed for that purpose.

By order of the Governor and Company of Adventurers of England trading into Hudson Bay.

Hudson Bay House, 7th February, 17 $\frac{1}{2}$ .



NOTE.—The said Company are by their charter constituted Lords Proprietors of all those lands, territories, seas, straits, bays, rivers, lakes, and soundings, within the entrance of the straits, to hold the same, as of Her Majesty's Manor of East Greenwich, in the County of Kent.

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THE COMPANY'S CLAIMS AFTER THE TREATY OF UTRECHT.

*To the Right Honorable the Lords Commissioners of Trade and Plantations.*

MY LORDS AND GENTLEMEN,—The Queen has commanded me to transmit to you the enclosed Petition of the Hudson Bay Company, that you may consider of it and report your opinion, what orders may properly be given upon the several particulars mentioned. In the meantime I am to acquaint you that the places and countries therein named, belonging of right to British subjects, Her Majesty did not think fit to receive any Act of Cession from the French King, and has therefore insisted only upon an order from that court for delivering possession to such persons as should be authorized by Her Majesty to take it; by this means the title of the Company is acknowledged, and they will come into the immediate enjoyment of their property without further trouble.

I am, my Lords and Gentlemen, your most obedient servant,

DARTMOUTH.

Whitehall, May 27th, 1713.

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*To the Queen's Most Excellent Majesty.*

The humble petition of the Governor and Company of Adventurers of England trading in the Hudson Bay,

SHEWETH:

That your petitioners, being informed that the Act of Cession is come over, whereby (among other matters thereby concerted), the French King obliges himself to restore to Your Majesty (or to whom Your Majesty shall appoint to take possession thereof) the Bay and Straits of Hudson, together with all the lands, seas, sea-coasts, rivers and places situate in the said Bay and Straits, as also all forts and edifices whatsoever, entire and not demolished, together with guns, shot, powder and other warlike provisions (as mentioned in the 10th article of the present treaty of peace, within six months after the ratification thereof, or sooner, if possible it may be done.

Your petitioners do most humbly pray Your Majesty will be graciously pleased to direct the said Act of Cession may be transmitted to your petitioners, as also Your Majesty's commission to Captain James Knight and Mr. Henry Kelsey, gentleman, to authorize them, or either of them, to take possession of the premises above mentioned, and to constitute Captain James Knight to be Governor of the fortress called Port Nelson, and all other forts and edifices, lands, seas, rivers and places aforesaid; and the better to enable your petitioners to recover the same, they humbly pray Your Majesty to give orders that they may have a small man-of-war to depart with their ships, by the 12th day of June next ensuing, which ship may in all probability return in the month of October.

And your petitioners as in duty bound shall ever pray.

By order of the Company.

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per WM. POTTER, *Secretary.*

*To the Right Honorable the Lords Commissioners of Trade and Plantations.*

MY LORDS,—I send Your Lordships enclosed, by the Queen's command, a memorandum of the Governor and Company of Hudson Bay, and a petition of several persons on behalf of themselves and the inhabitants of Mountserratt. It is Her Majesty's pleasure that Your Lordships should consider the said memorandum and petition, as likewise the several matters which are referred to the Commissaries by the tenth, eleventh, and fifteenth articles of the late treaty of peace, with the Most

Christian King, and upon the whole make your representation, to be laid before Her Majesty, for her further pleasure therein. \* \* \* \*

I am, my Lords, your most humble servant,  
BOLINGBROKE.

Whitehall, April, 13th, 1714.

*To the Queen's Most Excellent Majesty.*

The humble memorial of the Governor and Company of Adventurers of England trading into Hudson Bay.

That the said Company do, with the utmost gratitude, return Your Majesty their most humble and hearty thanks for the great care Your Majesty has taken for them by the Treaty of Utrecht, whereby the French are obliged to restore the whole Bay of Hudson and Straits, being the undoubted right of the Crown of Great Britain.

And whereas, by the 11th Article of the said treaty, satisfaction is to be made to the said Company for all damages sustained from the French in times of peace, for which Commissaries are to be named on both sides to adjust the same; the said Company humbly presume to acquaint Your Majesty that whenever Your Majesty in Your great wisdom shall think fit to name Commissaries for that purpose, they are ready to make out their demand of damages sustained from the French, according to the said 11th article.

All of which they nevertheless submit to Your Majesty's wisdom and goodness.  
The Hudson Bay Company,  
WM. POTTER, *Secretary*.

*To Wm. Popple, Esq.*

SIR,—I, being one of the Commissioners for the Hudson Bay Company, give me leave to take this opportunity to inform you we are sending a gentleman to take possession of our country very speedily. If the Lords have any commands touching the memorial lately presented to Her Majesty by us, relating to the damages the French did us in times of peace, this gentleman, who was in Hudson Bay at that time, can give their Lordships some information in that matter.

I am, your very humble servant  
JNO. PERY.

June 3rd, 1714.

*To the Right Honorable the Lord Viscount Bolingbroke.*

MY LORD,—In obedience to Her Majesty's commands, signified to us by Your Lordship's letter of the 13th of the last month, we have considered the memorial of the Governor of the Company of Hudson Bay, and the petition relating to Mount-serrat, and thereupon take leave to offer, that Her Majesty be pleased to signify to the Court of France, the necessity of appointing Commissaries to treat the several matters pursuant to the 10th, 11th and 15th articles of the Treaty of Peace with France, we being informed that the French Commissaries who are here have not full powers to treat on those matters; and as soon as we have their answer we shall lay it before Your Lordship.

My Lord,  
Your Lordship's most obedient and most humble servants,  
GUILDFORD,  
R. MONCKTON,  
ARTHUR MOORE,  
JOHN COTTON,  
JOHN SHARPE,  
SAMUEL PYTTS,  
THOS. VERNON.

18th June.



*To the Honorable the Lords Commissioners of Trade and Plantations.*

The humble representations of the Governor and Company of Adventurers of England trading into Hudson Bay,

SHewETH:

That pursuant to the 10th article of the Treaty of Utrecht they did, the beginning of June last, send a ship for Hudson Bay, and therein a Governor, one Captain Knight, and his Deputy, one Mr. Kelsey, to take possession of the whole Bay and Straits of Hudson, together with all other places relating thereto, as mentioned in the said articles, they having not only Her late Majesty (of blessed memory) Her commission for the same purpose, together with one from the Company, but likewise the most Christian King's order, under his hand and seal, with a power from the Canada Company to deliver up the same according to the said treaty, which ship, at the request of the said Canada Company, is not only to bring away the French settled in Hudson Bay, but likewise their effects, pursuant to the aforesaid treaty, they paying freight for the same, which ship may be expected the latter end of September or the beginning of October next.

They further represent to Your Lordships that, according to a memorial formerly delivered this honorable Board, relating to the limits or boundaries to be settled by Commissaries 'twixt the English and French in those parts, they humbly prayed, that for avoiding all disputes and differences that may in time arise between the Company and the French settled in Canada, that no wood-runners, either French or Indians or any other person whatsoever, be permitted to travel or seek for trade beyond the limits thereafter mentioned.

That the said limits, beginning from the island called Grimington Island, for Cape Perdrix, in the latitude of  $53\frac{1}{2}$  north, may be the boundary between the English and French, on the coast of Labrador towards Rupert's Land on the east main, and Nova Britannia on the French side.

That no French ship, barque, boat or vessel whatsoever, shall pass to the north-westward of Cape Perdrix, or Grimington's Island, towards or into the Straits or Bay of Hudson on any pretence whatsoever.

That a line supposed to pass to the south-westward from the said Island of Grimington or Cape Perdrix, to the great Lake Miscosinke, alias Mistoveny, dividing the same into two parts (as in the map now delivered), and from the said lake, a line to run south-westward into 49 degrees north latitude, as by the red line may more particularly appear, and that that latitude be the limit; that the French do not come to the north of it nor the English to the south of it.

That the French, nor any others employed by them, shall come to the north or north-westward of the said lake, or supposed line, by land or water, on or through any rivers, lakes, or countries, to trade or erect any forts or settlements whatsoever; and the English, on the contrary, not to pass the said supposed line, either to the southward or eastward.

The said Company having already delivered to Your Lordships an abstract of the damages sustained by the French in times of peace, amounting to £100,543 13s. 9d. according to the direction of the 11th article of the aforesaid treaty, which they humbly entreat Your Lordships to take care of, to the relief of the great hardships they have so long labored under.

By order of the Governor and Company of Adventures of England trading into Hudson Bay.

WM. POTTER, *Secretary.*

Hudson Bay House, 4th August, 1714.

*To the Right Honorable the Lords Commissioners of Trade, &c.*

My LORDS,—The Lords Justices desire to have an account forthwith laid before them of what has been done since the peace, relating to Hudson Bay, Nova Scotia, and St. Christopher's. Some things have passed in my office, others I believe in the

treasury, and a considerable deal I doubt not has been done by Your Lordships; wherefore if Your Lordships be pleased to collect a perfect state of the whole, I will furnish you with what you may want from me.

I am likewise on this occasion to put Your Lordships in mind of the point referred by the Treaty of Peace with France to the discussion of Commissaries that their Excellencies may be acquainted with the orders given to the Commissaries of commerce in these matters, and their proceedings thereupon.

Your letter of the 30th July, relating to Captain Van Estegle, has been laid before the Lords Justices, and the orders their Excellencies have been pleased to give thereupon, have been sent to the treasury and admiralty. It is likewise thought fit that Your Lordships, in your station, should advertise the governors and other officers in the plantations, of their duty in the particulars mentioned in your letter, both with respect to the trading to the French settlement, and to the illegal landing of goods from thence.

I am, my Lords, Your Lordships' most humble servant,

BOLINGBROKE.

Whitehall, August 12th, 1714.

*To the Viscount Bolingbroke.*

MY LORD,—In obedience to their Excellencies the Lords Justices' commands, signified to us by Your Lordship's letter of the 12th inst., requiring to know what has been done since the peace relating to Hudson Bay, Nova Scotia, and St. Christopher's, we take leave to represent :

That upon Your Lordship's letter of the 22nd July, requiring us to prepare proper instructions for the British Commissaries who are appointed to treat with those of France upon the 10th, 11th, and 15th articles of the Treaty of Peace, we wrote letters to several persons concerned in the Leeward Islands, and several parts of the continent, for what they might have to offer to such parts of the said articles as did relate to them respectively, and have received answers from some of them. We pray Your Lordship will please lay the enclosed copies thereof before their Excellencies, the Lords Justices, as follows :

Copy of a memorial from the Hudson Bay Company, describing the limits which they desire may be fixed between them and the French in those parts, as also an abstract of the damages they have sustained by the French in times of peace.

In relation to St. Christopher's, we further take leave to represent that upon several references from Her late Majesty in Council, from the Lord High Treasurer, and from the Secretary of State, we prepared a representation relating to the settlement of the French part of that Island, as also a letter to the late Lord Treasurer upon the same subject, copies whereof are here enclosed, which your Lordship will please also lay before their Excellencies the Lords Justices.

Since which time we have received some other petitions from French refugees, also referred to us, of the same nature as those mentioned in our above said representations, which we have not yet been able to consider so as to be able to make a report thereon.

We shall take care by the first opportunity to send directions to the Governors and other officers in the plantations, in relation to the illegal trade between the said plantations and the said French settlements.

We are, my Lord, your most obedient servants,

PH. MEADOWS,  
ARTHUR MOORE,  
JNO. SHARPE,  
SAMUEL PYTTS,  
THOS. VERNON.

Whitehall, Aug. 14th, 1714.



## 14.—TREATIES, CONVENTIONS, &amp;c.

## TREATY OF ST. GERMAIN, 1632.

TREATY BETWEEN LOUIS XIII., KING OF FRANCE, AND CHARLES I., KING OF ENGLAND,  
MADE AT ST. GERMAIN-EN-LAYE, THE 29TH OF MARCH, 1632.

(Extract.)

III. On the part of the King of Great Britain, the said Ambassador, in virtue of the powers with which he is vested, and which shall be inserted at the end of these presents, has promised and promises in the name of His said Majesty, to give up and restore (*rendre et restituer*) all the places occupied in New France, Acadia and Canada by the subjects of the King of Great Britain, by whom these places shall be restored; and to this end the said Ambassador shall deliver at the time of the signature of these presents to the Commissioners of His Most Christian Majesty, in due form, the authority which he received from the King of Great Britain for the restitution of the said places, together with the orders of His said Majesty to all those who had command in Fort Royal, the Fort of Quebec and Cape Breton, for the restoration of the said places and forts to be given up into the hands of those whom it may please His Most Christian Majesty to appoint, eight days after these orders shall have been notified to those who command or may then command; the said time of eight days being given to them to remove from those places and forts their arms, baggage, merchandise or money, utensils, and generally everything that belongs to them; to whom and to all who are in the said places, the term of three weeks, after the expiration of the eight days, is given, that they may during that time, or sooner if possible, retire to their vessels with their arms, munitions, baggage or money, utensils, merchandise, furs, and generally everything that belongs to them, for the purpose of going thence to England without remaining longer in the said countries. And as it is necessary for the English to send to those places to fetch their people and take them back to England, it is agreed that General de Caën shall pay the necessary expenses of equipping a vessel of two hundred tons, or two hundred and fifty tons' burthen, which the English shall send to those places; that is to say, the cost of chartering a vessel for the passage to and fro, the provisions of the sailors who work the vessel as well as of those who being on land are to be taken away, the wages of the men, and generally all that is necessary for the equipage of a vessel of the said tonnage for such a voyage, according to the usages and customs of England; and besides, for the merchandize remaining unsold in the hands of the English, satisfaction shall be given, according to the cost in England, with thirty per cent. of profit in consideration of the risk of the sea and port charges.

## TREATY OF BREDA, 1667.

(Extract.)

Art. X. The before-mentioned Seigneur, King of Great Britain, shall restore and give up to the above-named Seigneur, the Most Christian King, or to those who shall be charged and authorized on his part, sealed in proper form with the Great Seal of France, the country called Acadia, situated in North America, of which the Most Christian King was previously in enjoyment.

## TREATY OF NIMEGUEN, 1678.

ARTICLES OF PEACE BETWEEN THE EMPEROR AND THE FRENCH KING, CONCLUDED  
AND SIGNED AT NIMEGUEN, THE 3RD OF DECEMBER, 1678.

(Extract.)

Their Imperial and Most Christian Majesties, retaining a grateful sense of the offices and continual endeavors the Most Serene King of Great Britain hath used to

restore a general peace and public tranquillity, it is mutually agreed between the parties that he with his kingdom be included in this treaty, after the best and most effectual manner that may be.

Art. I. That there be a Christian, universal, true and sincere peace and friendship between their Imperial and Most Christian Majesties, their heirs and successors, kingdoms and provinces, as also between all and every the confederates of his said Imperial Majesty, more particularly the electors, princes and states of the empire, comprehended in this peace, their heirs and successors on the one part, and all and every of the confederates of his said Most Christian Majesty, comprehended in this peace, their heirs and successors, on the other; which said peace and friendship shall be so sincerely observed and improved that each party shall promote the honor, advantage and interest of the other. And there shall be so perpetual an oblivion and amnesty of all hostilities committed on each side since the beginning of the present troubles, that neither party shall, upon that or any other account or pretence, give or cause to be given hereafter to the other any trouble, directly or indirectly, under color of law or way of fact, within or without the empire, any formal agreement to the contrary notwithstanding; but all and every the injuries, violences, hostilities, damages and charges sustained on each side by words, writing or deeds, shall, without respect of persons or things, be so entirely abolished that whatsoever may upon that account be pretended against the other, shall be buried in perpetual oblivion.

### TREATY OF NEUTRALITY, 1686.

BETWEEN LOUIS XIV., KING OF FRANCE, AND JAMES II., KING OF ENGLAND. (CONCLUDED AT LONDON, THE 16TH NOVEMBER, 1686.)

(Extract.)

It has been concluded and agreed that from the day of the present treaty there shall be between the English and French nations a firm peace, union, concord, and good correspondence as well by sea as land in North and South America, and in the isles, colonies, forts and towns, without exception, in the territories of His Most Christian Majesty, and of His Britannic Majesty, and governed by the commandments of their said Majesties respectively.

II. That no vessel or boat, large or small, belonging to His Most Christian Majesty shall be equipped or employed in the said isles, colonies, fortresses, towns and governments of His said Majesty, for the purpose of attacking the subjects of His Britannic Majesty, in the isles, colonies, fortresses, towns and governments of His said Majesty, or doing there any harm or damage. And in this manner, likewise, that no vessel or boat, great or small, belonging to the subjects of His Britannic Majesty shall be equipped or employed in the isles, colonies, fortresses, towns and governments of His said Majesty, for the purpose of attacking the subjects of His Most Christian Majesty in the isles, colonies, fortresses, towns and governments of His said Majesty, or to do them any injury or damage.

III. That no soldiers, or men-at-arms, or any other persons whatsoever, residing or living in the said isles, towns or governments of His Most Christian Majesty, or come there from Europe in garrison, shall exercise any act of hostility, or do any injury or damage directly or indirectly, to the subjects of His Britannic Majesty in the said isles, colonies, fortresses, towns and governments of His said Majesty; or lend or give any aid or assistance in men or provisions to savages against whom His Britannic Majesty shall be at war. And, in like manner, no soldiers, or men-at-arms, or any other persons whatsoever, residing or being in the said isles, colonies, fortresses, towns and governments of His said Britannic Majesty, or come there from Europe in garrison, shall exercise any act of hostility or do any injury or damage to subjects of His Most Christian Majesty in the said isles, colonies, fortresses, towns and governments of His Majesty; or lend or give any aid or assistance in men or provisions, to savages with whom His Most Christian Majesty shall be at war.



IV. It has been agreed that each of the said Kings shall have and hold the domains, rights and preeminences in the seas, straits, and other waters of America, and in the same extent which of right belongs to them, and in the same way they enjoy them at present.

V. And therefore the subjects, inhabitants, merchants, commanders of ships, masters and mariners of the kingdoms, provinces and dominions of each King respectively shall abstain and forbear to trade and fish in all the places possessed or which shall be possessed by one or the other party in America, viz.: the King of Great Britain's subjects shall not drive their trade and commerce, nor fish in the harbors, bays, creeks, roads, shoals, or places which the Most Christian King holds or shall hereafter hold in America: And, in like manner, the Most Christian King's subjects shall not drive their commerce and trade, nor fish in the waters, bays, creeks, roads, shoals or places which the King of Great Britain possesses or shall hereafter possess in America. And if any ship or vessel shall be found trading or fishing contrary to the tenor of this treaty, the said ship or vessel, with its lading, proof being given thereof, shall be confiscated; nevertheless, the party who shall find himself aggrieved by such sentence or confiscation, shall have liberty to apply himself to the Privy Council of the King, by whose governors or judges the sentence has been given against him. But it is always to be understood that the liberty of navigation ought in no manner to be disturbed, where nothing is committed against the genuine sense of this treaty. \* \* \*

XI. The commandants, officers, subjects of either of the two Kings, shall not molest the subjects of the other King in the establishment of their colonies respectively, or in their commerce and navigation.

XII. For the greater security of the subjects of His Most Christian Majesty as well as those of His Britannic Majesty, and to prevent vessels of war, or other vessels owned by private persons, doing injury or damage, all captains of vessels, as well of his Most Christian Majesty as those of His Britannic Majesty, and all their subjects who equip vessels at their own expense, also persons in the enjoyment of privileges, and companies, shall be forbidden to do any injury or damage to those of the other nation, on pain of being punished in case of contravention, and be liable for all damages, either by the seizure of their goods or the imprisonment of their persons.

[By Art. XIII. all captains of war vessels, armed at the expense of private persons, were hereafter to give bonds in the sum of £1,000 stg., or 13,000 livres, and when the number of men is more than 150, in £2,000 stg., or 26,000 livres, that they would make good all damages which they or their officers might cause in the course of their navigation against the present treaty.]

[By Art. XIV the governors and officers of the two Kings were to discountenance all pirates; not giving them any aid nor allowing them to take shelter in their ports respectively; "and that the said governors and officers should be expressly ordered to punish as pirates all those who might be found to have armed one or more vessels sailing without commission or legitimate authority."]

[Art. XV made the taking by the subject of either King, of any commission in the army of a Sovereign at war with the other, piracy.]

[Art. XVII. If disputes arise between the subjects of the two Crowns in the isles, colonies, ports, towns and governments under their dominion, they are not to be allowed to interrupt the peace, but are to be decided by those having authority on the spot, and in case they cannot decide them, they are to remit them at once to the two Crowns to be settled by their Majesties.]

XVIII. Further, it has been concluded and agreed that if ever, which God forbid, any rupture should take place in Europe between the said Crowns, the garrisons, armed forces, or subjects of whatever condition of His Most Christian Majesty being in the isles, colonies, forts, towns and governments which are at present, or may hereafter be, under the dominion of His said Majesty in America, shall not exercise any act of hostility by sea or land against the subjects of His Britannic Majesty, inhabitants of any of these colonies of America. And, in like manner, in case of a rupture in Europe, the garrisons, armed forces, and subjects of whatever

condition of His Britannic Majesty, being in the isles, colonies, forts, towns and governments which are at present, or may hereafter be, under the dominion of His Britannic Majesty in America, shall not exercise any act of hostility, either by sea or land, against the subjects of His Most Christian Majesty inhabiting any colony whatever in America. But there shall always be a firm peace and neutrality between the said peoples of France and Great Britain, just as if no such rupture had taken place. [XIX. This treaty not to derogate from the Treaty of Breda, July, 1667, all the articles of which are to remain in force and vigor to be observed.]

### PROVISIONAL TREATY CONCERNING AMERICA, 1687.

BETWEEN LOUIS XIV., KING OF FRANCE, AND JAMES II., KING OF ENGLAND. (CONCLUDED AT WHITEHALL, 11TH DECEMBER, 1687.)

[M. Paul Barillon, Councillor of State and French Ambassador, M. Francois Dussou de Bonrepas, were the Commissioners for France, and Counts Sunderland and Middleton, and Lord of Godolphin, were appointed on behalf of Great Britain, "to execute the treaty concluded on the 6-16 November, 1686, to settle and terminate all the differences which had arisen between the subjects of the two Crowns, in America, as well as to fix the bounds and limits of the colonies, isles, islands, lands and countries under the dominion of the two Kings, in America, and governed by their Commandants, or which are of their dependencies."]

We, the undersigned Commissioners, in virtue of the powers which we have received from the said Kings, our Masters, promise, agree and stipulate in their name, by the present treaty, that, up to the 11th January of the year 1689, new style, and after that time until the said Most Serene Kings give some new and express order in writing, all persons and Governors and Commandants of the colonies, isles, lands and countries whatsoever under the dominion of the two Kings, in America, are absolutely forbidden to commit any act of hostility against the subjects of either of the said Kings, or to attack them; and the Governors and Commandants are not to suffer, under any pretext whatever, that they shall do any violence; and in case of contravention on the part of the said Governors, they shall be punished, and obliged, in their own private names, to make restitution for the damage which may have been done by such contravention; and the same shall be done in the case of all other contraventions; and the present convention shall have full and entire effect in the best manner possible. We have, besides, agreed that the said Most Serene Kings shall, as soon as possible, send the necessary orders to their Commandants in America, and that each shall send to the other authentic copies of the same.

(Signed),

BARILLON D'AMONCOURT,  
DUSSON DE BONREPAS,  
SUNDERLAND,  
MIDDLETON,  
GODOLPHIN.

### THE TREATY OF RYSWICK, 1697.

(Extracts.)

VII. The Most Christian King shall restore to the said King of Great Britain all countries, islands, forts and colonies, wheresoever situated, which the English did possess before the declaration of this present war. And, in like manner, the King of Great Britain shall restore to the Most Christian King, all countries, islands, forts and colonies, wheresoever situated, which the French did possess before the declaration of war; and this restitution shall be made on both sides within the space of six months, or sooner if it can be done. And to that end, immediately after the ratifi-



cation of this treaty, each of the said Kings shall deliver or cause to be delivered to the other, or to Commissioners authorized in his name for that purpose, all acts of concession, instruments and necessary orders, duly made and in proper form, so that they may have their effect.

VIII. Commissioners shall be appointed on both sides to examine and determine the rights and pretensions which either of the said Kings hath to the places situated in Hudson Bay; but the possession of those places which were taken by the French, during the peace that preceded this present war, and were retaken by the English during this war, shall be left to the French by virtue of the foregoing articles. The capitulation made by the English on the 5th September, 1695, shall be observed according to its form and tenor; the merchandizes therein mentioned shall be restored; the Governor at the fort taken there shall be set at liberty, if it be not already done; the differences which have arisen concerning the execution of the said capitulation and the value of the goods there lost, shall be adjudicated and determined by the said Commissioners; who, immediately after the ratification of the present treaty, shall be invested with sufficient authority for the settling of the limits and confines of the lands to be restored on either side by virtue of the foregoing article, and likewise for exchanging of lands, as may conduce to the mutual interest and advantage of both Kings.

## TREATY OF UTRECHT, 1713.

(Extracts.)

X. The said Most Christian King shall restore to the Kingdom and Queen of Great Britain, to be possessed in full right forever, the Bay and Straits of Hudson, together with all lands, seas, sea-coasts, rivers and places situate in the said Bay and Straits, and which belong thereunto, no tracts of land or of sea being excepted, which are at present possessed by the subjects of France. All which, as well as any buildings there made in the condition they now are, and likewise all fortresses there erected either before or since the French seized the same, shall, within six months from the ratification of the present treaty, or sooner, if possible, be well and truly delivered to the British subjects having commission from the Queen of Great Britain to demand and receive the same, entire and undemolished, together with all the cannon and cannon-ball which are therein, as also with a quantity of powder if it be there found, in proportion to the cannon-ball, and with the other provision of war usually belonging to cannon. It is, however, provided, that it may be entirely free for the Company of Quebec, and all other the subjects of the Most Christian King whatsoever, to go by land or by sea, whithersoever they please, out of the lands of the said Bay, together with all their goods, merchandizes, arms and effects of what nature or condition soever, except such things as are above referred in this article. But it is agreed on both sides, to determine within a year by Commissaries to be forthwith named by each party, the limits which are to be fixed between the said Bay of Hudson and the places appertaining to the French; which limits both the British and French subjects shall be wholly forbid to pass over, or thereby to go to each other by sea or by land. The same Commissioners shall also have orders to describe and settle, in like manner, the boundaries between the other British and French colonies in those parts.

XI. The above mentioned Most Christian King shall take care that satisfaction be given, according to the rule of justice and equity, to the English Company trading to the Bay of Hudson, for all damages and spoil done to their colonies, ships, persons and goods by the hostile incursions and depredations of the French, in time of peace, an estimate being made thereof by Commissioners to be named at the requisition of each party. The said Commissioners shall moreover inquire as well into the complaints of the British subjects concerning ships taken by the French in time of peace, as also concerning the damage sustained last year in the island called Montserrat

and others, as into those things of which the French subjects complain, relating to the capitulation in the Island of Nevis, and Castle of Gambia, also to French ships, if perchance any such have been taken by British subjects in time of peace; and in like manner into all disputes of this kind which shall be found to have arisen between both nations, and which are not yet ended; and due justice shall be done on both sides without delay.

XII. The Most Christian King shall take care to have delivered to the Queen of Great Britain, on the same day that the ratification of this treaty shall be exchanged solemn and authentic letters, or instruments, by virtue whereof it shall appear, that the Island of St. Christopher is to be possessed alone hereafter by British subjects, likewise all Nova Scotia or Acadia, with its ancient boundaries, as also the City of Port Royal, now called Annapolis Royal, and all other things in those parts which depend on the said lands and islands, together with the dominion, propriety, and possession of the said islands, lands, and places, and all right whatsoever, by treaties, or by any other way obtained, which the Most Christian King, the Crown of France, or any the subjects thereof, have hitherto had to the said islands, lands and places, and the inhabitants of the same, are yielded and made over to the Queen of Great Britain, and to Her Crown forever, as the Most Christian King doth at present yield and make over all the particulars above said, and that in such ample manner and form, that the subjects of the Most Christian King shall hereafter be excluded from all kind of fishing in the said seas, bays and other places on the coasts of Nova Scotia, that is to say, on those which lie towards the east within thirty leagues, beginning from the island commonly called Sable, inclusively, and thence stretching along towards the south-west.

XIII. The island called Newfoundland, with the adjacent islands, shall from this time forward belong of right wholly to Britain; and to that end the Town and Fortress of Placentia, and whatever other places in the said island are in the possession of the French shall be yielded and given up, within seven months from the exchange of the ratifications of this treaty, or sooner, if possible, by the Most Christian King, to those who have a commission from the Queen of Great Britain for that purpose. Nor shall the Most Christian King, his heirs and successors, or any of their subjects, at any time hereafter lay claim to any right to the said island or islands, or to any part of it or them. Moreover, it shall not be lawful for the subjects of France to fortify any place in the said island of Newfoundland, or to erect any buildings there, besides stages made of boards, and huts necessary and usual for drying of fish; or to resort to the said island beyond the time necessary for fishing and drying of fish. But it shall be allowed to the subjects of France to catch fish and to dry them on land in that part only, and in no other besides that, of the said Island of Newfoundland, which stretches from the place called Cape Bonavista to the northern point of the said island, and from thence running down by the western side, reaches as far as the place called Point Riche. But the Island called Cape Breton, as also all others, both in the mouth of the River St. Lawrence and in the Gulf of the same name, shall hereafter belong of right to the French, and the Most Christian King shall have all manner of liberty to fortify any place or places there.

XIV. It is expressly provided that in all the said places and colonies to be yielded and restored by the Most Christian King, in pursuance of this treaty, the subjects of the said King may have liberty to remove themselves within a year to any other place as they shall think fit, together with all their movable effects. But those who are willing to remain there, and to be subjects of the Kingdom of Great Britain, are to enjoy the free exercise of their religion according to the usage of the Church of Rome, as far as the laws of Great Britain do allow the same.

XV. The subjects of France inhabiting Canada, and others, shall hereafter give no hindrance or molestation to the five nations or cantons of Indians subject to the dominion of Great Britain, nor to the other natives of America who are friends to the same. In like manner, the subjects of Great Britain shall behave themselves peaceably towards the Americans who are subjects or friends of France; and on both sides they shall enjoy full liberty of going or coming on account of trade. As also



the natives of those countries shall with the same liberty, resort, as they please, to the British and French Colonies, for promoting trade on one side and the other, without any molestation or hindrance, either on the part of the British subjects or of the French. But it is to be exactly and distinctly settled by Commissioners, who are, and who ought to be, accounted the subjects and friends of Britain or of France.

## THE TREATY OF AIX-LA-CHAPELLE, 1748.

(SPAIN)

(Extract.)

Art. V. All the conquests that have been made since the commencement of the present war, or which, since the conclusion of the preliminary articles, signed the 30th April last, may have been or shall be made, either in Europe or the East and West Indies, or in any part of the world whatsoever, being to be restored without exception in conformity to what was stipulated by the said preliminary articles, and by the declarations since signed, the high contracting parties agree to give orders immediately for proceeding to the restitution, as well as to the putting the Most Serene Infant Don Philip in possession of the states which are to be yielded to him by virtue of the said preliminaries, the said party solemnly renouncing, as well for themselves as their heirs and successors, all rights and claims, by what title or pretence soever, to all the states, countries, and places that they respectively engage to restore or yield; saving, however, the reversion stipulated of the states yielded to the Most Serene Infant Don Philip.

## THE TREATY OF 1763.

THE DEFINITE TREATY OF FRIENDSHIP AND PEACE BETWEEN HIS BRITANNIC MAJESTY, THE MOST CHRISTIAN KING, AND THE KING OF SPAIN, CONCLUDED AT PARIS, THE 10TH OF FEBRUARY, 1763.

(Extracts.)

Art. II. The Treaties of Westphalia of 1648; those of Madrid between the Crowns of Great Britain and Spain, of 1667 and 1670; the Treaties of Peace at Nimeguen, of 1678 and 1679; of Ryswick, of 1697; those of Peace and Commerce of Utrecht, of 1713; that of Baden of 1714; the Treaty of the Triple Alliance of the Hague, of 1717; That of the Quadruple Alliance of London, of 1718; the Treaty of Peace of Vienna, of 1738; the Definite Treaty of Aix-La-Chapelle, of 1748; and that of Madrid, between the Crowns of Great Britain and Spain, of 1750; as well as the Treaties between the Crowns of Spain and Portugal, of the 13th of February, 1668, of the 6th of February, 1715; and on the 12th of February, 1761; and that of the 11th of April, 1713, between France and Portugal, with the guarantees of Great Britain, serve as a basis and foundation to the peace and the present Treaty; and for this purpose they are all renewed and confirmed in the best form, as well as all the treaties in general, which subsisted between the high contracting parties before the war, as if they were inserted here word for word, so that they are to be exactly observed for the future, in their whole tenor, and religiously executed on all sides, in all their points, which shall not be derogated from by the present treaty, notwithstanding all that may have been stipulated to the contrary by any of the high contracting parties; and all the said parties declare that they will not suffer any privilege, favor or indulgence to subsist, contrary to the treaties above confirmed, except what shall have been agreed and stipulated by the present treaty.

Art. IV. His Most Christian Majesty renounces all pretensions which he has heretofore formed, or might form, to Nova Scotia or Acadia in all its parts, and guarantees the whole of it, with all its dependencies to the King of Great Britain;

moreover, His Most Christian Majesty cedes and guarantees to his said Britannic Majesty, in full right, Canada, with all its dependencies, as well as the Island of Cape Breton, and all the other islands and coasts in the Gulf and River St. Lawrence, and in general, everything that depends on the said countries, lands, islands and coasts, with the sovereignty, property possession, and all rights acquired by treaty or otherwise, which the Most Christian King and the Crown of France have had till now over the said countries, islands, lands, places, coasts and their inhabitants, so that the Most Christian King cedes and makes over the whole to the said King and to the Crown of Great Britain, and that in the most ample form without restriction, and without any liberty to depart from the said cession and guaranty under any pretence, or to disturb Great Britain in the possessions above mentioned.

Art. VII. In order to re-establish peace on solid and durable foundations, and to remove for ever all subject of dispute with regard to the limits of the British and French territories on the Continent of America, it is agreed that, for the future, the confines between the dominions of His Britannic Majesty and those of His Most Christian Majesty in that part of the world, shall be fixed irrevocably by a line drawn along the middle of the River Mississippi, from its source to the River Iberville, and from thence by a line drawn along the middle of this river and the Lakes Maurepas and Pontchartrain, to the sea; and for this purpose the Most Christian King cedes in full right, and guarantees to His Britannic Majesty the river and port of the Mobile, and everything which he possesses, or ought to possess, on the left side of the Mississippi, except the Town of New Orleans, and the island in which it is situated, which shall remain to France; provided, that the navigation of the Mississippi shall be equally free as well to the subjects of Great Britain as to those of France, in its whole breadth and length, from its source to the sea, and expressly that part which is between the said Island of New Orleans and the right bank of that river, as well as the passage both in and out of its mouth.

## THE DEFINITE TREATY OF PEACE AND FRIENDSHIP

BETWEEN HIS BRITANNIC MAJESTY AND THE UNITED STATES OF AMERICA. SIGNED AT PARIS, THE 3RD OF SEPTEMBER, 1783.

(Extracts.)

Article I.—His Britannic Majesty acknowledges the said United States, viz., New Hampshire, Massachusetts Bay, Rhode Island, and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, to be free, sovereign and independent States; that he treats with them as such, and for himself, his heirs and successors, relinquishes all claims to the government, propriety and territorial rights of the same, and every part thereof.

Article II.—And that all disputes which might arise in future on the subject of the boundaries of the said United States may be prevented, it is hereby agreed and declared, that the following are and shall be their boundaries, viz., from the north-west angle of Nova Scotia, viz., that angle which is formed by a line drawn due north, from the source of St. Croix River to the highlands, along the highlands which divide those rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, to the north-westernmost head of Connecticut River; thence down along the middle of that river to the forty-fifth degree of north latitude; from thence by a line due west on said latitude until it strikes the River St. Lawrence; thence along the middle of said river into Lake Ontario, through the middle of said lake until it strikes the communication by water between Lake Ontario and Lake Erie; thence along the middle of said communication into Lake Erie, through the middle of said lake, until it arrives at the water communication between that lake and Lake Huron; thence along the middle of said water communi-



cation into Lake Huron; thence through the middle of said lake to the water communication between that lake and Lake Superior; thence through Lake Superior, northward of the isles Royal and Philippeaux, to the Long Lake; thence through the middle of said Long Lake, and the water communication between it and the Lake of the Woods, to the said Lake of the Woods; thence through the said lake to the most north western point thereof, and from thence on a due west course to the River Mississippi; thence by a line to be drawn along the middle of the said River Mississippi until it shall intersect the northernmost part of the thirty-first degree of north latitude. South, by a line to be drawn due east from the determination of the line last mentioned in the latitude of thirty-one degrees north of the equator, to the middle of the River Apalachicola or Catshouche; thence along the middle thereof to its junction with the Flint River; thence straight to the head of St. Mary's River, and thence down along the middle of St. Mary's River to the Atlantic Ocean. East, by a line to be drawn along the middle of the River St. Croix, from its mouth in the Bay of Fundy to its source, and from its source directly north to the aforesaid highlands, which divide the rivers that fall into the Atlantic Ocean from those which fall into the River St. Lawrence; comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia, on the one part, and East Florida, on the other, shall respectively touch the Bay of Fundy and the Atlantic Ocean; except such islands as now are, or heretofore have been, within the limits of the said Province of Nova Scotia.

### TREATY OF AMITY, COMMERCE AND NAVIGATION

BETWEEN HIS BRITANNIC MAJESTY AND THE UNITED STATES OF AMERICA, CONCLUDED THE 19TH OF NOVEMBER, 1794.

(Extract.)

Article IV.—Whereas it is uncertain whether the River Mississippi extends so far to the northward as to be intersected by a line to be drawn due west from the Lake of the Woods, in the manner mentioned in the Treaty of Peace between His Majesty and the United States; it is agreed, that measures should be taken in concert with His Majesty's Government in America, and the Government of the United States, for making a joint survey of the said river from one degree of latitude below the Falls of St. Anthony, to the principal source or sources of the said river, and also the parts adjacent thereto; and that if, on the result of such survey, it should appear that the said river would not be intersected by such a line as is above mentioned, the two parties will thereupon proceed by amicable negotiation, to regulate the boundary line in that quarter as well as all other points to be adjusted between the said parties, according to justice and mutual convenience, and in conformity to the intent of the said treaty.

### TREATY OF GHENT, CONCLUDED THE 24TH OF DECEMBER, 1814.

(Extract.)

Article VI.—Whereas by the former Treaty of Peace, that portion of the boundary of the United States from the point where the forty-fifth degree of north latitude strikes the River Iroquois or Cataraquy, to the Lake Superior, was declared to be "along the middle of said river into Lake Ontario; through the middle of said lake until it strikes the communication by water between that lake and Lake Erie; thence along the middle of said communication into Lake Erie; through the middle of said lake until it arrives at the water communication into the Lake Huron; thence through the middle of said lake to the water communication between that lake and

Lake Superior;" and whereas doubts have arisen what was the middle of the said river, lakes and water communications, and whether certain islands lying in the same were within the dominions of His Britannic Majesty or of the United States: In order, therefore, finally to decide these doubts, they shall be referred to two Commissioners, to be appointed, sworn, and authorized to act exactly in the manner directed with respect to those mentioned in the next preceding article, unless otherwise specified in this present article. The said Commissioners shall meet, in the first instance, at Albany, in the State of New York, and shall have power to adjourn to such other place or places as they shall think fit. The said Commissioners shall, by a report or declaration, under their hands and seals, designate the boundary through the said river, lakes and water communications, and decide to which of the two contracting parties the several islands lying within the said rivers, lakes and water communications, do respectively belong, in conformity with the true intent of the said treaty of one thousand seven hundred and eighty-three. And both parties agree to consider such designation and decision as final and conclusive. And in the event of the said two Commissioners differing, or both or either of them refusing, declining, or wilfully omitting to act, such reports, declarations, or statements shall be made by them, and such reference to a friendly Sovereign or State shall be made in all respects as in the latter part of the Fourth Article is contained, and in as full a manner as if the same was herein repeated.

### CONVENTION

BETWEEN GREAT BRITAIN AND THE UNITED STATES, CONCLUDED THE 20TH OF OCTOBER, 1818.

(Extract.)

ARTICLE II.—It is agreed that a line drawn from the most north-western point of the Lake of the Woods, along the forty-ninth parallel of north latitude, or, if the said point shall not be in the forty-ninth parallel of north latitude, then that a line drawn from the said point due north or south, as the case may be, until the said line shall intersect the said parallel of north latitude, and from the point of such intersection due west along and with the said parallel, shall be the line of demarcation between the territories of the United States and those of His Britannic Majesty, and that the said line shall form the northern boundary of the said territories of the United States, and the southern boundary of the territories of His Britannic Majesty, from the Lake of the Woods to the Stony Mountains.

### TREATY

BETWEEN GREAT BRITAIN AND THE UNITED STATES, CONCLUDED THE 9TH OF AUGUST, 1842.

(Extract.)

ARTICLE II.—It is, moreover, agreed that, from the place where the Joint Commissioners terminated their labors, under the VI. Article of the Treaty of Ghent, to wit, at a point in the Neebish Channel, near Muddy Lake, the line shall run into and along the ship channel between St. Joseph and St. Tammany Islands, to the division of the channel at or near the head of St. Joseph's Island; thence turning eastwardly and northwardly around the lower end of St. George's or Sugar Island, and following the middle of the channel which divides St. George's from St. Joseph's Island; thence to the East Neebish Channel nearest to St. George's Island, through the middle of the lake George; thence west of Jonas' Island into St. Mary's River, to a point in the middle of that river, about one mile above St. George's or Sugar Island, so as to



appropriate and assign the said island to the United States; thence adopting the line traced on the maps by the Commissioners, through the River St. Mary and Lake Superior, to a point north of Ile Royale, in said lake, one hundred yards to the north and east of Ile Chapeau, which last mentioned island lies near the north-eastern point of Ile Royale, where the line marked by the Commissioners terminates; and from the last mentioned point south-westerly through the middle of the sound between Ile Royale and the north-western mainland, to the mouth of Pigeon River, and up the said river to and through the North and South Fowl Lakes, to the lakes of the height of land between Lake Superior and the Lake of the Woods; thence along the water communication to Saisaginaga, and through that lake; thence to and through Cypress Lake, Lac du Bois Blanc, Lac La Croix, Little Vermillion Lake, and Lake Namecan, and through the several smaller lakes, straits, or streams connecting the lakes here mentioned to that point in Lac la Pluie, or Rainy Lake, at the Chaudière Falls, from which the Commissioners traced the line to the most north-western point of the Lake of the Woods; thence along the said line to the said most north-western point, being in latitude  $49^{\circ} 23' 55''$  north, and in longitude  $95^{\circ} 14' 38''$  west from the Observatory at Greenwich; thence, according to existing treaties, due south to its intersection with the 49th parallel of north latitude, and along that parallel to the Rocky Mountains. It being understood that all the water communications, and all the usual portages along the line from Lake Superior to the Lake of the Woods, and also Grand Portage, from the shore of Lake Superior to the Pigeon River as now actually sued, shall be free and open to the use of the citizens and subjects of both countries.

## TREATY

BETWEEN HER MAJESTY AND THE UNITED STATES OF AMERICA, FOR THE SETTLEMENT  
OF THE OREGON BOUNDARY, CONCLUDED THE 15TH OF JUNE, 1846.

(Extracts.)

ARTICLE I. From the point on the 49th parallel of north latitude, where the boundary laid down in existing treaties and conventions between Great Britain and the United States terminates, the line of boundary between the territories of Her Britannic Majesty and those of the United States shall be continued westward along the said 49th parallel of north latitude, to the middle of the channel which separates the continent from Vancouver's Island, and thence southerly, through the middle of the said channel and of Fuca's Straits, to the Pacific Ocean; provided, however, that the navigation of the whole of the said channel and straits, south of the 49th parallel of north latitude remain free and open to both parties.

II. From the point at which the 49th parallel of north latitude shall be found to intersect the great northern branch of the Columbia River, the navigation of the said branch shall be free and open to the Hudson Bay Company, and to all British subjects trading with the same, to the point where the said branch meets the main stream of the Columbia, and thence down the said main stream to the ocean, with free access into and through the said river or rivers, it being understood that all the usual portages along the line, thus described, shall in like manner be free and open. In navigating the said river or rivers, British subjects, with their goods and produce shall be treated on the same footing as citizens of the United States; it being, however, always understood that nothing in this article shall be construed as preventing or intended to prevent the Government of the United States from making any regulations respecting the navigation of the said river or rivers not inconsistent with the present treaty.

III. In the future appropriation of the territory south of the 49th parallel of north latitude, as provided in the first article of this treaty, the possessory rights of the Hudson Bay Company, and of all British subjects who may be already in the

occupation of land or other property lawfully acquired within the said territory, shall be respected.

IV. The farms, lands, and other property of every description belonging to the Puget's Sound Agricultural Company on the north side of the Columbia River, shall be confirmed to the said Company. In case, however, the situation of those farms and lands should be considered by the United States to be of public and political importance, and the United States Government should signify a desire to obtain possession of the whole or of any part thereof, the property so required shall be transferred to the said Government at a proper valuation to be agreed upon between the parties.

### 15.—AN ACT 43 GEO. III., CAP. 138 (1803).

AN ACT FOR EXTENDING THE JURISDICTION OF THE COURTS OF JUSTICE IN THE PROVINCES OF LOWER AND UPPER CANADA, TO THE TRIAL AND PUNISHMENT OF PERSONS GUILTY OF CRIMES AND OFFENCES WITHIN CERTAIN PARTS OF NORTH AMERICA ADJOINING TO THE SAID PROVINCES.

Whereas crimes and offences have been committed in the Indian Territories and other parts of America, not within the limits of the Provinces of Lower or Upper Canada, or either of them, or of the jurisdiction of any of the courts established in those Provinces, or within the limits of any civil government of the United States of America, and are, therefore, not cognizable by any jurisdiction whatever, and by reason thereof great crimes and offences have gone, and may hereafter go unpunished and greatly increase. For remedy whereof, may it please Your Majesty that it may be enacted, and be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords, spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, all offences committed within any of the Indian Territories, or parts of America not within the limits of either of the said Provinces of Lower or Upper Canada, or of any civil government of the United States of America, shall be and be deemed to be offences of the same nature, and shall be tried in the same manner, and subject to the same punishment as if the same had been committed within the Provinces of Lower or Upper Canada.

2. And be it further enacted, that it shall be lawful for the Governor or Lieutenant-Governor, or person administering the Government for the time being of the Province of Lower Canada by commission under his hand and seal, to authorise and empower any person or persons, wheresoever resident or being at the time, to act as civil magistrates and justices of the peace, for any of the Indian Territories or parts of America not within the limits of either of the said Provinces, or of any civil government of the United States of America, as well as within the limits of either of the said Provinces, either upon information taken or given within the said Provinces of Lower or Upper Canada, or out of the said Provinces in any part of the Indian Territories or parts of America aforesaid, for the purpose only of hearing crimes and offences, and committing any person or persons guilty of any crime or offence to safe custody, in order to his or their being conveyed to the said Province of Lower Canada, to be dealt with according to law; and it shall be lawful for any persons whatever, to apprehend and take before any persons so commissioned aforesaid, or to apprehend and convey, or cause to be conveyed, with all convenient speed, to the Province of Lower Canada, any person or persons guilty of any crime or offence, there to be delivered into safe custody for the purpose of being dealt with according to law.

3. And be it further enacted, that every such offender may and shall be prosecuted and tried in the courts of the Province of Lower Canada (or if the Governor or Lieutenant-Governor, or person administering the Government for the time being, shall, from any of the circumstances of the crime or offence, or the local



situation of any of the witnesses for the prosecution or defence, think that justice may more conveniently be administered in relation to such crime or offence in the Province of Upper Canada, and shall, by any instrument under the Great Seal of the Province of Lower Canada, declare the same, then that every such offender may and shall be prosecuted and tried in the Court of the Province of Upper Canada) in which crimes or offences of the like nature are usually tried, and where the same would have been tried if such crime or offence had been committed within the limits of the Province where the same shall be tried under this Act; and every offender tried and convicted under this Act shall be liable and subject to such punishment as may by any law in force in the Province where he or she shall be tried, be inflicted for such crime or offence; and such crime and offence may and shall be laid and charged to have been committed within the jurisdiction of such court; and such court may and shall proceed to trial, judgment and execution or other punishment for such crime or offence in the same manner in every respect, as if such crime or offence had been really committed within the jurisdiction of such court; and it shall also be lawful for the judges and other officers of the said courts to issue subpoenas and other processes for enforcing the attendance of witnesses on any such trial; and such subpoenas and other processes shall be as valid and effectual, and be in full force and put in execution on any parts of the Indian Territories, or other parts of America, out of and not within the limits of the civil government of the United States of America, as well as within the limits of either of the said Provinces of Lower or Upper Canada, in relation to the trial of any crimes or offences by this Act made cognizable in such court, or to the more speedily and effectually bringing any offender or offenders to justice under this Act, as fully and amply as any subpoenas or other processes are within the limits of the jurisdiction of the court from which any such subpoenas or processes shall issue as aforesaid; any Act or Acts, law or laws, custom, usage, matter or thing to the contrary notwithstanding.

4. Provided always, and be it further enacted, that if any crime or offence charged and prosecuted under this Act shall be proved to have been committed by any person or persons not being a subject or subjects of His Majesty; also within the limits of any colony, settlement or territory belonging to any European State, the court before which such prosecution shall be had shall forthwith acquit such person or persons not being such subject or subjects as aforesaid of such charge.

5. Provided, nevertheless, that it shall and may be lawful for such court to proceed in the trial of any person being a subject or subjects of His Majesty, who shall be charged with the same or any other offence, notwithstanding such offence shall appear to have been committed within the limits of any colony, settlement or territory belonging to any European State as aforesaid.

## 16.—THE RUPERT'S LAND ACT, 1868.

AN ACT FOR ENABLING HER MAJESTY TO ACCEPT A SURRENDER, UPON TERMS, OF THE LANDS, PRIVILEGES AND RIGHTS OF "THE GOVERNOR AND COMPANY OF ADVENTURERS OF ENGLAND TRADING INTO HUDSON BAY," AND FOR ADMITTING THE SAME INTO THE DOMINION OF CANADA.

[31st July, 1868.]

Whereas, by certain letters patent, granted by His late Majesty King Charles the Second, in the twenty-second year of His reign, certain persons therein named were incorporated by the name of "The Governor and Company of Adventurers of England trading into Hudson Bay," and certain lands and territories, rights of government and other rights, privileges, liberties, franchises, powers and authorities were thereby granted, or purported to be granted, to the said Governor and Company in His Majesty's Dominions in North America:

And, whereas, by the British North America Act, 1867, it was (amongst other things) enacted that it should be lawful for Her Majesty, by and with the advice and

consent of Her Majesty's Most Honorable Privy Council, on Address from the Houses of the Parliament of Canada, to admit Rupert's Land and the North-Western Territory, or either of them, into the Union on such terms and conditions as are in the Address expressed, and as Her Majesty thinks fit to approve, subject to the provisions of the said Act:

And, whereas, for the purpose of carrying into effect the provisions of the said British North America Act, 1867, and of admitting Rupert's Land into the said Dominion as aforesaid, upon such terms as Her Majesty thinks fit to approve, it is expedient that the said lands, territories, rights, privileges, liberties, franchises, powers and authorities, so far as the same have been lawfully granted to the said Company, should be surrendered to Her Majesty, her heirs and successors, upon such terms and conditions as may be agreed upon by and between Her Majesty and the said Governor and Company as hereinafter mentioned.

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords, spiritual and temporal, and Commons, in this present Parliament assembled, by the authority of the same, as follows:—

1. This Act may be cited as "Rupert's Land Act, 1868."

2. For the purpose of this Act, the term "Rupert's Land" shall include the whole of the lands and territories held or claimed to be held by the said Governor and Company.

3. It shall be competent for the said Governor and Company to surrender to Her Majesty, and for Her Majesty, by any instrument under sign manual and signet, to accept a surrender of all or any of the lands, territories, rights, privileges, liberties, franchises, powers and authorities whatsoever, granted or purported to be granted by the said letters patent to the said Governor and Company, within Rupert's Land, upon such terms and conditions as shall be agreed upon, by and between Her Majesty and the said Governor and Company: Provided, however, that such surrender shall not be accepted by Her Majesty until the terms and conditions upon which Rupert's Land shall be admitted into the said Dominion of Canada shall have been approved of by Her Majesty, and embodied in an Address to Her Majesty from both the Houses of the Parliament of Canada, in pursuance of the one hundred and forty-sixth section of the British North America Act, 1867; and that the said surrender and acceptance thereof shall be null and void, unless within a month from the date of such acceptance Her Majesty does, by Order in Council, under the provisions of the said last recited Act, admit Rupert's Land into the said Dominion: Provided further that no charge shall be imposed by such terms upon the Consolidated Fund of the United Kingdom.

4. Upon the acceptance by Her Majesty of such surrender, all rights of government and proprietary rights, and all other privileges, liberties, franchises, powers and authorities whatsoever granted, or purported to be granted, by the said letters patent to the said Governor and Company, within Rupert's Land, and which shall have been so surrendered shall be absolutely extinguished: Provided that nothing herein contained shall prevent the said Governor and Company from continuing to carry on in Rupert's Land or elsewhere trade and commerce.

5. It shall be competent to Her Majesty, by any such Order or Orders in Council as aforesaid, on Address from the Houses of the Parliament of Canada, to declare that Rupert's Land shall, from a date to be therein mentioned, be admitted into and become part of the Dominion of Canada; and thereupon it shall be lawful for the Parliament of Canada, from the date aforesaid, to make, ordain and establish within the land and territory so admitted as aforesaid, all such laws, institutions and ordinances, and to constitute such courts and officers, as may be necessary for the peace, order and good government of Her Majesty's subjects and others therein: Provided that until otherwise enacted by the said Parliament of Canada, all the powers, authorities, and jurisdiction of the several courts of justice now established in Rupert's Land, and of the several officers thereof, and of all magistrates and justices now acting within the said limits, shall continue in full force and effect therein.



## 17.—PROCLAMATION OF 7TH OCTOBER, 1763.

(Extracts.)

And whereas it is just and reasonable, and essential to our interest, and the security of our colonies, that the several nations or tribes of Indians with whom we are connected, and who live under our protection, should not be molested or disturbed in the possession of such parts of our Dominion and territories as, not having been ceded to us, are reserved to them, or any of them, as their hunting grounds; we do therefore, with the advice of our Privy Council, declare it to be our royal will and pleasure, that no Governor or Commander-in-Chief in any of our colonies of Quebec, East Florida or West Florida do presume, upon any pretence whatever, to grant warrants of survey, or pass any patents for land, beyond the bounds of their respective Governments, as described in their Commissions; as also that no Governor or Commander-in-Chief of our other colonies or plantations in America do presume, for the present, and until our further pleasure be known, to grant warrants of survey, or pass patents for any lands beyond the heads or sources of any of the rivers which fall into the Atlantic Ocean from the west or north-west, or upon any lands whatever, which, not having been ceded to or purchased by us as aforesaid, are reserved to the said Indians, or any of them.

And we do further declare it to be our royal will and pleasure, for the present, as aforesaid, to reserve under our sovereignty, protection, and dominion, for the use of the said Indians, all the land and territories not included within the limits of our said three new Governments, or within the limits of the territory granted to the Hudson Bay Company; as also all the lands and territories lying to the westward of the rivers which fall into the sea from the west and north-west as aforesaid; and we do hereby strictly forbid, on pain of our displeasure, all our loving subjects from making any purchases or settlements whatsoever, or taking possession of any of the lands above reserved, without our especial leave and license for that purpose first obtained.

And we do further strictly enjoin and require all persons whatsoever, who have either willingly, or inadvertently, seated themselves upon any lands within the countries above described, or upon any other lands which, not having been ceded to, or purchased by us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such settlements.

And whereas great frauds and abuses have been committed in the purchasing lands of the Indians, to the great prejudice of our interests, and to the great dissatisfaction of the said Indians; in order therefore to prevent such irregularities for the future, and to the end that the Indians may be convinced of our justice and determined resolution to remove all reasonable cause of discontent, we do, with the advice of our Privy Council, strictly enjoin and require, that no private person do presume to make any purchase from the said Indians, of any lands reserved to the said Indians, within those parts of our colonies where we have thought proper to allow settlement; but if at any time any of the said Indians should be inclined to dispose of the said lands, the same shall be purchased only for us, in our name, in some public meeting or assembly of the said Indians, to be held for that purpose, by the Governor or Commander-in-Chief of our colony respectively, within which they shall lie; and in case they shall be within the limits of any proprietaries, conformable to such directions and instructions as we or they shall think proper to give for that purpose. And we do, by the advice of our Privy Council, declare and enjoin, that the trade with the said Indians shall be free and open to all our subjects whatever; provided that every person who may—incline to trade with the said Indians do take out a license for carrying on such trade from the Governor or Commander-in-Chief of any of our colonies respectively where such person shall reside, and also give security to observe such regulations as we shall, at any time think fit, by ourselves or Commissaries to be appointed for this purpose, to direct and appoint for the benefit of the said trade: and we do hereby authorize, enjoin, and require the Governors and Commanders-in-Chief of all our colonies respectively, as well as those under our immediate government, as

those under the government and direction of proprietaries, to grant those licenses without fee or reward, taking especial care to insert therein a condition that such license shall be void, and the security forfeited in case the person to whom the same is granted shall refuse or neglect to observe such regulations as we shall think proper to prescribe, as aforesaid.

And we do further expressly enjoin and require all officers whatever, as well military as those employed in the management and direction of the Indian affairs, within the territories reserved, as aforesaid, for the use of the said Indians, to seize and apprehend all persons whatever, who, standing charged with treason of treason, murder, or other felonies or misdemeanors, shall fly from justice and take refuge in the said territory, and to send them under a proper guard to the colony where the crime was committed of which they shall stand accused, in order to take their trial for the same.

Given at our Court at St. James, the 7th day of October, 1763, in the third year of Our reign.

God Save the King.

## 18.—NORTH-WESTERN ONTARIO, ITS BOUNDARIES, RESOURCES AND COMMUNICATIONS.

PREPARED UNDER INSTRUCTIONS FROM THE ONTARIO GOVERNMENT.

By the award of the arbitrators, to whom was referred the duty of determining the northern and western boundaries of the Province of Ontario,\* a vast and magnificent territory has been declared to be within the jurisdiction of the Ontario Government and Legislature. This fine region contains within its limits, timber lands of great value, rich and varied mineral deposits, rivers and lakes of noble proportions,—abounding in fish, and opening up remote districts to travel and commerce—and touches at once the head waters of the St. Lawrence navigation and the shores of the great northern sea, the treasures of which, when sought with the ardour and appliances of modern enterprise, may yield a return not even dreamed of by those old explorers and navigators who were most sanguine of its resources. The possession of such a country necessarily entails upon its rulers some burdens and many responsibilities. To preserve peace and order, to administer justice, to maintain civil rights, to encourage settlement, to improve existing means of communication, to promote education, are duties coming, under the law, within the functions of Provincial authority. It is therefore important to ascertain the advantages likely to accrue to the people of Ontario from the assumption of the new or additional obligations incidental to the possession of this extensive domain.

### THE BOUNDARIES.

The question of boundary set at rest by the award, had been the subject of much laborious investigation.† The Dominion Government contended that the northern boundary of Ontario was the height of land forming the watershed of the St. Lawrence and great lakes, and skirting, at distances varying from fifteen to fifty miles, the northern shores of Lakes Superior and Nepigon. The western boundary, it was contended, was to be ascertained by a line drawn due north from the confluence of the Ohio and Mississippi Rivers, and which was found to be in longitude 89° 9' 27" west. Such a line would have intersected Thunder Bay, divided the existing settlements on its shores, alienated from Ontario a large district—including the Village of

\* Con. Statutes (Ont.) cap. iv. The arbitrators were, Chief Justice Harrison, Sir Francis Hincks, and Sir Edward Thornton, the British Minister at Washington.

† See Report on the Boundaries of Ontario, by David Mills, 1873; also, an Investigation of the unsettled boundaries of Ontario, by Charles Lindsey, 1873.



Prince Arthur's Landing, the population gathering round Fort William, the site of the projected terminus of the Canadian Pacific Railway, and the Townships of Blake, Crooks, Pardee, Poiponge, Oliver, Neebing and McIntyre, already under Ontario jurisdiction,—and left within the Province, only a narrow strip north of the lakes and south of the height of land. Opinions were divided as to the rights of the Province beyond the boundaries contended for in behalf of the Dominion, but it will probably be found that the decision of the arbitrators is, on the whole, consistent with equity, convenience, and public policy. The award declares that the following are and shall be the boundaries of the Province of Ontario, namely:—"Commencing at a point on the southern shore of Hudson Bay, commonly called James' Bay, where a line produced due north from the head of Lake Temiscamingue would strike the said south shore, thence along the said south shore westerly to the mouth of the Albany River, thence up the middle of the said Albany River and of the lakes thereon to the source of the said river, at the head of Lake St. Joseph, thence by the nearest line to the easterly end of Lac Seul, being the head waters of the English River, thence westerly through the middle of Lac Seul and the said English River to a point where the same will be intersected by a true meridional line drawn northerly from the international monument placed to mark the most north-westerly angle of the Lake of the Woods by the recent Boundary Commission, and thence due south following the said meridional line to the said international monument, thence southerly and easterly following upon the international boundary line between the British possessions and the United States of America into Lake Superior. But, if a true meridional line drawn northerly from the said international boundary at the said most north-westerly angle of the Lake of the Woods shall be found to pass to the west of where the English River empties into the Winnipeg River, then and in such case the northerly boundary of Ontario shall continue down the middle of the said English River to where the same empties into the Winnipeg River, and shall continue thence in a line drawn due west from the confluence of the said English River with the said Winnipeg River until the same will intersect the meridian above described, and thence due south following the said meridional line to the said international monument, thence southerly and easterly following upon the international boundary line between the British possessions and the United States of America into Lake Superior."

#### AREA.

The district included within these boundaries is of equal if not of greater area than the whole of the rest of Ontario, exclusive of the Lakes Ontario, Superior, Huron and Erie. Omitting those lakes, the Province, within the limits embraced in the proposition of the Dominion, contained about 64,000,000 acres, or 100,000 square miles of territory. From the Quebec boundary line—from Lake Temiscamingue to James' Bay—to the Lake of the Woods, the distance cannot be much less than seven hundred miles; while, measured from north to south, the new territory covers a breadth of country varying from over three hundred to one hundred miles. The Province of Ontario will consequently, in future, possess an area of fully 200,000 square miles. This is 80,000 square miles greater than the area of the United Kingdom; only 12,000 square miles less than the whole German Empire; only 2,000 square miles less than France; and equal to the combined areas of Holland, Portugal, United Italy, Switzerland and Belgium. The awarded territory, alone, possesses an area greater by 20,000 square miles than the group of countries just named, excepting Italy.\*

#### POPULATION.

The present population of the territory is chiefly confined to the settlements on the north or north-west shore of Lake Superior, and in the valley of the Kaminis-

\* Mr. Devine, Deputy Surveyor-General of Ontario, gives 97,000 square miles as a rough approximate estimate of the area of the awarded territory. Other authorities, however, consider 120,000 to 140,000 square miles to be its probable extent.

tiquia, to the colony at Fort Frances, on Rainy River, to a few settlers and Hudson Bay officials at Moose and Albany, on James' Bay, and to the Indians, who are to be found mostly at Rainy River, the Lake of the Woods, Lac Seul, and Pigeon River. A few Half-breeds and christianized Indians are also settled at Islington, on the Winnipeg River, and around some of the Hudson Bay Company's factories. The total population, including, of course, the Thunder Bay settlements, is probably under 10,000, half of whom are Indians and Half-breeds.

#### LAKES AND RIVERS.

In the more southerly portion of the territory lies the chain of rivers and lakes forming what has been popularly known as the Dawson Route from Thunder Bay to Fort Garry. The western central portion is intersected by the Canadian Pacific Railway from Fort William to Rat Portage. The principal rivers of the territory are:—The Albany, flowing north-eastward to James' Bay from Lake St. Joseph, which lies on the northern boundary line, about midway between the Bay and Winnipeg River; English River, which, leaving Lac Seul, after throwing off a branch to the southward, finds its way to the Winnipeg; the Seine, a fine stream, that, coming from the north-east, is finally lost in Rainy Lake; the Manitou, flowing due south from the lake of that name to Rainy Lake; the Kaministiquia and its confluent, the Matawin, falling into Thunder Bay; the Moose River, emptying itself into James' Bay, and which divides into three large branches, known as the Missinibi, flowing northward from Lake Missinibi, just north of the height of land that divides that lake from the head waters of the Michipicoton River; the Mattagami, or south branch of the Moose; and the Abbitibbe, which runs from Lake Abbitibbe, lying upon, but chiefly to the westward of the Quebec and Ontario boundary line,—until it joins the main stream to the south of Moose Factory. Should the difficulties attending the passage of Hudson Straits prove to be a more serious hindrance to their navigation than modern appliances can successfully overcome, the tendency would be to give to Ontario the benefit of any traffic that might be generated in Hudson Bay, or on its coasts, and which would seek an outlet by way of the Moose or Albany Rivers, or by other means of communication with the great lakes.

#### AGRICULTURAL CAPACITY.

The value of the territory in an agricultural sense will have to be largely determined by the facilities afforded for the development of other industries. Should its fisheries, its forests, and its mines yield a return at all proportionate to present indications, the agriculturist will find an ample demand for the produce of large sections of country which will well repay cultivation. In noticing the features and resources of the territory more in detail it will be most convenient roughly to divide it into two sections; one that may be generally described as lying between Lake Superior and Lake of the Woods, the other between Lake Superior and James' Bay.

#### WESTERN DIVISION.

##### LAKE SUPERIOR TO LAKE OF THE WOODS.

From Fort William, at Thunder Bay, to the Lake of the Woods, according to the course taken by the Canadian Pacific Railway, which crosses the waters of the latter at Rat Portage, its northern extremity, the distance is 298 miles.\* The Dawson route, which, following the navigable waters, curves to the southward until it reaches the International Boundary line, which it follows until the north-west angle is reached—involves a journey of 357 miles.† The latter may, in fact, be described

\* Report Canadian Pacific Railway, 1877.

† Report Public Works. Sess. Papers (Canada), 1875.



as the arc of a circle of which the railway line is the chord. South of the railway, and connecting it at various points with the water route, are innumerable lakes and streams, some navigable for large boats, others with occasional portages for canoes, so that it has been said an Indian in his canoe may traverse the whole region with little impediment or difficulty.

#### THE DAWSON ROUTE.

The Dawson Route was originally designed to form a means of communication through Canadian territory with the Red River Settlements. The partial construction, however, of the Canadian Pacific Railway, and the completion of railway communication between Duluth and Red River, have supplanted the older route, which must henceforth be regarded mainly in connection with local colonization and industries. To this object the fine road from Thunder Bay to Lake Shebandowan, the Fort Frances Lock on Rainy River, and numerous improvements on the intermediate waters and portages may all be made largely subservient. A brief description of the route itself will give a very fair idea of the peculiar characteristics of the region it traverses.\* From Thunder Bay to Lake Shebandowan by road, the distance is 45 miles. The remainder of the route is represented as follows:—

	Miles.	Miles.
Lake Shebandowan.....		18·00
Portage .....	0·75	
Lake Kashebowie.....		9·00
Height of Land Portage.....	1·00	
Lac des Mille Lacs.....		18·50
Baril Portage.....	0·25	
Lake Baril.....		8·00
Brulé Portage.....	0·25	
Lake Windegoostegan.....		12·00
French Portage .....	1·75	
Lake Kaogassikok.....		15·00
Pine Portage.....	0·38	
Lac duex Rivières.....		1·22
Duex Rivières Portage.....	0·40	
Lake Sturgeon.....		16·00
Maligne Portage (lift).....		
River Maligne.....		10·00
Island Portage.....	0·06	
Lake Nequaquon.....		17·00
Nequaquon Portage.....	3·25	
Lake Namenkan.....		15·00
Kettle Falls Portage.....	0·12	
Rainy Lake.....		44·00
Fort Frances Portage (now avoided by the Lock).....	0·12	
Rainy River and Lake of the Woods, to north-west angle.		120·00
	8·33	303·72

To Rat Portage is 35 miles further.....

We shall notice presently the method by which it is suggested the necessity for transshipment at the portages may be overcome, and a journey along the whole route be performed with comparative ease. Meantime, it is worthy of notice that the settlers along a line of country, over 300 miles in extent, may secure communication by the cheap and ready means afforded by a series of splendid water stretches, varying from one to one hundred and twenty miles in length, and interrupted by only

\* Report Public Works. *Sess. Papers* (Canada), 1875.

eleven portages, eight of which are less than a mile, and two under two miles, while only one exceeds three miles in length. The facilities for communication are not, however, actually confined to the waters on the line of the Dawson Route. South of the Thunder Bay and Shebandowan Road, are the Kaministiquia and Matawin Rivers, both fine and navigable streams, and, along the international boundary line, are Pigeon River, Lake Sageniga and Basswood Lake, connected with Nequaquon Lake, already mentioned as a link in the chain of the Dawson Route. From the north-east, navigable by boats for 30 miles from its mouth, and for over 100 miles for the passage of timber, the Seine empties itself into Rainy Lake at Sturgeon Falls, while the Manitou—also a fine river—approaches the same lake from a more northerly source.

#### THE CANADIAN PACIFIC RAILWAY.

The Canadian Pacific Railway has, meantime, become a most important factor in connection with the colonization of the region under consideration. It was originally intended that the line, after leaving Fort William, should deflect to the southward, in order to touch the water route at Sturgeon Falls, at the head of a navigable arm of Rainy Lake. By the construction of the Lock at Fort Frances and the removal of a few obstructions in the Rainy River, an unbroken line of some 200 miles of regular communication would have been established between Sturgeon Falls and the crossing of the Lake of the Woods, at any spot determined upon, whence another section of the railway would have been constructed to Red River. But, for engineering reasons, the railway has been carried farther north, and now first touches the navigable waters at Port Savanne, situated at the northern extremity of Lac de Mille Lacs, 71 miles from Thunder Bay.

#### IMPROVEMENTS OF THE LAKE ROUTE.

The best mode by which traffic may be maintained between Lac de Mille Lacs and Lake of the Woods, has been the subject of investigation before a Committee of the House of Commons.\* At Lac des Mille Lacs, the height of land is reached separating the waters that flow into the Lake of the Woods from those that find their outlet in Lake Superior. From Port Savanne to the head of Rainy Lake, the distance is about 112 miles, with  $6\frac{1}{2}$  miles of portaging. Adopting the suggestions of Mr. Hugh Sutherland, Superintendent of Public Works in the North-West, the Commons Committee, in their report, advised the construction of tramways upon the portages between Port Savanne and Kettle Falls, to be worked with light narrow-gauge cars drawn by horses, the cars being run on the barges, and thus transferred with their freight, without breaking bulk or requiring transhipment. Mr. Sutherland was of opinion that these works could be executed for a sum of \$150,000 in one season, and "that they would lead to the colonization of cultivable tracts along Rainy River and other parts of the Dawson Route, and also furnish the Province of Manitoba with increased facilities for obtaining lumber at a much cheaper rate than at present." What this would do for the lumberers of Ontario will be noticed further on. To complete the information respecting the accessibility of this portion of the territory it is only needful to add, that the Canadian Pacific Railway is being rapidly completed to English River, 113 miles west from Thunder Bay, and that the link between Rat Portage and Selkirk, on Red River, 23 miles north of Winnipeg, with which it is connected by railway, is also under construction. The country lying directly west of the north-west angle of the Lake of the Woods was long since rendered accessible by a good road from the angle to Fort Garry.

#### INDUCEMENTS TO SETTLEMENT.

Having noticed the means of access to and internal communications of the western portions of the territory, it becomes necessary to consider what attractions it may

\* Report Select Standing Committee on Immigration and Colonization, House of Commons, 1878.



possess in itself to the settler or speculator. The exhaustive explorations of Canadian Pacific surveyors and their associates have done most towards affording information on this head.

#### KAMINISTQUIA VALLEY.

Professor Macoun,\* in his report to the Dominion Government, after repelling the current opinion that the western shores of Lake Superior are unfit for settlement on account of the severity of the climate, and remarking that "the vegetation around Lake Superior is noted for its luxuriance," thus describes the aspect of the country in the vicinity of the Kaministiquia:—"As the traveller proceeds up the river, roses (*Rosa blanda*) begin to appear. By the time two miles are passed, black-ash (*Fraxinus sambucifolia*) shows on the banks, and the undergrowth becomes almost identical with that of the rear of Hastings and Frontenac, on the shore of Lake Ontario. A few miles further, and forms peculiar to a dry soil begin to take the place of those seen further down, while the alluvial flats along the river support a most luxuriant growth of just such plants as would be seen on any river bottom in Eastern or Central Canada. Thickets of wild plums (*Prunus Americana*), three or four different cherries, gooseberries, currants, raspberries and strawberries grow in profusion, interspersed with various species of *Viburnum* and other caprifolaceous plants. The herbaceous ones were very numerous and luxuriant, and these, including the wild pea (*Lathyrus venosus et ochrocolencus*), and the vetch (*Vicia Americana*), caused such tangled thickets that it was almost an impossibility to force our way through them. Wild hops (*Humulus Sapulus*) climbed up almost every tree. For the whole distance up to Kakabeka Falls there was a constant influx of new species having a westward tendency. Between Kakabeka Falls and the mouth of the river I detected 315 species, all of these natives of Hastings except eighteen." Professor Macoun adds:—"I could see nothing in the flora to lead me to doubt the feasibility of raising all the cereals in the valley of the Kaministiquia, a valley said by Professor Hind to contain an area of more than 20,000 acres exclusive of the Indian reservations. Nor is Professor Macoun at all singular in his estimate of the attractions of the Kaministiquia valley.

The Rev. George (now Professor) Grant, in his popular work,† says of the same district:—"The flora is much the same as in our eastern provinces; the soil light, with a surface covering of peaty or sandy loam, and a subsoil of clay, fairly fertile and capable of being easily cleared. The vegetation is varied, wild fruits being especially abundant, raspberries, currants, gooseberries, and tomatoes; flowers like the convolvulus, roses, a great profusion of asters, wild kallas, water lilies on the ponds, wild chives on the rocks in the streams, and generally a rich vegetation. It is a good country for emigrants of the farmer class. The road, too, is first-rate and the market is near." "The Valley of Kaministiquia," he goes on to say, "is acknowledged to be a splendid farming country. Timothy grass was growing to the height of four feet on every vacant spot from chance seeds. A bushel and a half of barley, which was all a squatter had sown, was looking as if it could take the prize at an Ontario Exhibition." Thirty years before Professor Grant's visit, Sir George Simpson had been equally struck with the evidences of fertility of this region. He says:—"‡The River (Kaministiquia) during the day's march passed through forests of elm, oak, pine, birch, &c., being studded with isles not less fertile and lovely than its banks; and many spots reminded us of the rich and quiet scenery of England. The paths of the portages were spangled with violets, roses, and many other wild flowers, while the currant, the gooseberry, raspberry, plum, cherry, and even the vine, were abundant. All this bounty of nature was, as it were, imbued with life by the cheerful notes of a variety of birds." Remembering that the country so enthusiastically described is contiguous to a mineral region of extraordinary richness, that the produce raised in the Valley of the Kaministiquia can be readily conveyed by water to the whole of the

\*Appendix C to Report, Canadian Pacific Railway, 1874.

†Ocean to Ocean, p. 28.

‡Overland Journey Round the World, 1841-2, Vol. 1, p. 36.

north or west shores of Lake Superior, and that the terminus of a transcontinental railway is close at hand with all the local demand that implies, little more need be said as to its attractiveness to the agricultural settler.

#### VALLEY OF THE MATAWIN.

Proceeding westward with Professor Macoun, we find him referring in the following terms to the Valley of the Mattawin, a confluent of the Kaministiquia. \* "At the Matawin, vegetables of every description were growing luxuriantly, but more especially timothy hay which seems to be peculiarly suited to the region round Thunder Bay. Many of the stalks were four feet in length with heads fully eight inches long. After passing the Mattawin the soil changes to a reddish clay, but there is no change in the vegetation. The flora of the region indicates a moist climate, with a sufficiency of warmth to bring seeds in all cases to perfection. When the country becomes cleared up—which will be in a few years—either by accidental fires or by those of the settler, a marked change will take place in the climate. It will become drier and all kinds of grain will ripen much earlier. Coniferous trees, with a thick coating of moss, cover the greater part of the country; when these are gone a new crop of trees will spring up, but they will be deciduous ones, and the country will probably be less moist and warmer."

#### THE HEIGHT OF LAND.

In the immediate vicinity of Lake Shebandowan there is little land fit for cultivation, but there is some fine land in the valleys and on the slopes in many places at no great distance, especially west of the Kashabowie Portage. There are scattered groups of red and white pine, but the principal forest growth is birch, oak, aspen, and scrub pine. The height of land is passed, and Lac des Mille Lacs is reached, surrounded with a continuous forest of spruce, balsam aspen and birch, with a sprinkling of red and white pine, and occasionally groups of Banksian pine. Baril Lake presents, according to Mr. Macoun, much the same characteristics as Lac des Mille Lacs.

#### A PINE REGION.

But now the aspect of the country changes. On the shores of Lake Windogostegon are large groves of red, white and Banksian pine, the forest "taking the appearance of the pine lands of Ontario."† This continues till Pine Portage is reached, where "red and white pine attain to a great size, many of them being over three feet in diameter." As there are considerable areas of good land in the neighborhood of Pine Portage, it may yet be the scene of a profitable conjunction of the lumbering and agricultural industries. From Pine Portage to Rainy Lake, and until the western end of the lake is reached, the country wears a cheerless aspect.

Pine of good quality nearly disappears, but although little of it is fit for the saw-mill, vast quantities of railway ties might be produced and easily shipped to Rat Portage. It will be borne in mind, however, that the foregoing applies only to one strip in a vast area of country, and that on the banks of the Seine and other rivers flowing into Rainy Lake there is a very large growth of both red and white pine. The whole region, in fact, bounded by Lac Seul and English River on the north, and Lake of the Woods on the west, may be said to be a pine-growing territory.

#### ‡ RAINY RIVER.

We have now reached what, in an economical sense, is the most profitable and important section of the whole region lying between the height of land west

\* Report, Canadian Pacific Railway, Appendix C, 1874.

† Professor Macoun's Report.

‡ More properly René River, its original name.



of Lake Superior and the Lake of the Woods. Professor Macoun, speaking of his visit to the district, says:—"The approach to Fort Frances is very beautiful. As we approach the outlet to the lake and enter Rainy River, the right bank appears very much like a gentleman's park, the trees standing far apart and having the rounded tops of those seen in open grounds. Blue Oak (*Quercus Prinos* var. *discolor*) and Balsam Poplar (*Populus balsamifera*), with a few aspen, are the principal forest trees. These line the bank, and, for two miles after leaving the lake, we glide down between walls of living green, until we reach the fort, which is beautifully situated on the right bank of Rainy River, immediately below the falls. All sorts of grain can be raised here, as well as all kinds of garden vegetables; little attention is given to agriculture, but enough was seen to show that nature would do her part if properly assisted. Barley, three feet high, and oats over that, showed there was nothing in the climate or soil to prevent a luxuriant growth. \* \* \* The length of the river is about eighty miles. The right, or Canadian bank, for the whole distance, is covered with a heavy growth of forest trees, shrubs, climbing vines and beautiful flowers. The Indians say the timber gets larger as you proceed inland. The forest trees consist of oak, elm, ash, birch, basswood, balsam, spruce, aspen, balsam poplar, and white and red pine near the Lake of the Woods. The whole flora of this region indicates a climate very like that of Central Canada, and the luxuriance of the vegetation shows that the soil is of the very best quality. Wild peas and vetches were in the greatest profusion; the average height was about six feet, but many specimens were obtained of eight feet and upwards. While the boat was wooding, I took a stroll inland, and found progress almost impossible, owing to the astonishing growth of herbaceous plants. The following plants were observed on Rainy River, and are only an index to the vast profusion of nature's bounties in that region: *Lilium Canadense*, *Lilium Philadelphicum*, *Vicia Americana*, *Calystegia spithamea*, *Calystegia sepium*, *Aralia hispida*, *Lobelia Kalmii*, *Smilacina stellata*, *Lathyrus venosus*, *Lathyrus ochroleucus*, *Monarda fistulosa*, *Viburnum pubescens*, *Astragalus Canadensis*, *Erysimum chieranthoides*, *Asarum Canadensis*, and *Lopaulthus anistatus*." Writing of the Rainy Lake region, Sir George Simpson was fully as eulogistic of its merits and beauties as he had been of those of the Kaministiquia valley. His description agrees remarkably with that of Mr. Macoun, just quoted. Sir George Simpson says: †"From Fort Frances downwards, a stretch of nearly 100 miles, the river is not interrupted by a single impediment, while yet the current is not strong enough to retard an ascending traveller. Nor are the banks less favorable to agriculture than the waters themselves to navigation, resembling in some measure those of the Thames, near Richmond. From the very brink of the river there rises a gentle slope of green sward, crowned in many places with a plentiful growth of birch, poplar, beech, elm and oak. Is it too much for the eye of philanthropy to discern through the vista of futurity this noble stream connecting, as it does, the fertile shores of two spacious lakes, with crowded steamboats on its bosom and populous towns on its borders?" A few years later, before a Select Committee of the House of Commons in London, Sir George endeavored to qualify to some extent his former glowing panegyric. But he was at that time looking on this and some other matters in question, not with "the eye of philanthropy," but through a pair of Hudson Bay monopoly spectacles, and, under a vigorous cross-examination by Mr. Roebuck, had virtually to admit the correctness of his first description, founded as it was on an experience of twenty-seven years.‡ The report of Mr. S. J. Dawson—now M.P. for Algoma—in 1874—and then engineer in charge of the district, fully corroborates the views of the two eminent authorities already quoted. He says:—§"Alluvial land of the best description extends along the banks of Rainy River, in an unbroken stretch of seventy-five or eighty miles from Rainy

\* Report, 1874.

† Overland Journey Round the World. 1841—2, p. 45.

‡ Committee, House of Commons (G.B.), 1857, on Hudson Bay Company.

§ Public Works Report, 1874. Sessional Papers (Canada), Appendix 23.

Lake to the Lake of the Woods. In this tract, where it borders on the river, there is not an acre unsusceptible to cultivation. At intervals there are old park-like Indian clearings, partly overspread with oak and elm, which although they have naturally sprung up, have the appearance of ornamental plantations. \* \* \* The whole district is covered with forests, and Canadian settlers would find themselves in a country similar in many respects to the land of their nativity; nor does the climate differ essentially from that of the most favored parts of Ontario or Quebec. Wheat was successfully grown for many years at Fort Frances, both by the old North-West Company and their successors, the Hudson Bay Company. The Indians still cultivate maize on little farms on Rainy River and Lake of the Woods. In many places the wild grape grows in extraordinary profusion, yielding fruit which comes to perfection in the fall. Wild rice, which requires a high summer temperature, is abundant, and, indeed the flora, taken generally, indicates a climate in every way well adapted to the growth of cereals."

#### SUPPLY OF PINE TIMBER.

As regards the pine-growing capacities of this region, Mr. Dawson says:—"The Lake of the Woods receives the drainage of an area which may be approximately estimated at thirty-three thousand six hundred square miles, or 21,504,000 acres. In this vast district there are, of course, considerable varieties of climate, soil and natural productions, but I desire expressly to draw attention to the fact, that it reaches nearly to the northern and north-western limits of the growth of pine wood of the class known, in Ontario and Quebec, as red and white pine; that is, in the region eastward of the great prairies. Within this district, on the streams tributary to Rainy Lake, there are, in many places, extensive groves both of red and white pine, of a size and quality well adapted to all the purposes for which such timber is usually applied. On the alluvial belt of Rainy River white pine of a large size is to be seen interspersed with other descriptions of forest trees, and on the islands of the Lake of the Woods and main land to the north and east, there are occasionally pine groves of moderate extent; but, on proceeding to the north, by way of the Winnipeg, it gradually becomes more rare, until, on reaching Lake Winnipeg, it finally disappears." In the region west of the Lake of the Woods, and thence to the Rocky Mountains, except at one or two isolated spots near the Lake, pine, properly so called, is unknown, and has to be imported by the ever-increasing population of Manitoba and the North-West. Lt.-Col. Dennis, lately Surveyor-General of the Dominion, and now Deputy Minister of the Interior, estimates the quantity of pine to be found between Lake Superior and the Lake of the Woods,—including that on the islands in the lake and within the region which may be supposed to be embraced between the international boundary and the new boundary awarded to Ontario on the north—at twenty-six thousand millions of feet, board measure. All this is destined to be consumed in the Province of Manitoba and the North-West Territories. That it will form no unprofitable trade to the capitalist who embarks in it, may be judged from the fact that timber sells at the present time for from \$25 to \$45 per thousand at Winnipeg. A cargo lately shipped from Collingwood, where it cost \$10 per thousand, was sold for \$30 in the capital of Manitoba, and realized a good profit after paying all the charges for freight *via* Duluth and the Red River. From Fort Frances the cost of shipment to Winnipeg would be trifling, and, as the Lake of the Woods is too stormy for the transit of logs, the lumber must be manufactured in a district where it is found, thus giving a grand impetus to local industry and lake transportation. The foundations of such a trade have been already laid by the allotment, under Dominion authority, of extensive timber limits, and the establishment of a saw mill on a large scale at Fort Frances. A population of some 400 souls has been already attracted to the spot, and it is stated that some persons who had passed *via* Rainy River to Manitoba had returned and taken up land on

\*Public Works (Canada) Report. Appendix 23. Sessional Papers, 1875.



Rainy River, owing to a preference for a well timbered country over one in which timber was scarce and dear.

#### ALBERTON.

The name of "Alberton" has been given to the settlement, which also rejoices in the possession of a local newspaper, the *Alberton Star*, in which appeared, during the present year, the following:—"The lots immediately fronting on the river are ten chains in width and have a depth of two miles; each settler is allowed to homestead one of these lots, and pre-empt the adjoining one, if vacant, also. About fifty entries have been taken here during the past summer, and considerable improvements have and are now being made on these lots. Some very fine crops were harvested by those who took the trouble to sow and plant in this section last season, samples of which may be seen at the land office here. To the industrious man, be he farmer, mechanic or laborer, with a small capital, Rainy River presents an opening second to no other district in the Dominion of Canada—and where in a few years any such man may become independent. \* \* \* \* \* From Fort Frances to Rat Portage (about 120 miles) we have an excellent water route *via* Rainy River and the Lake of the Woods. There are upon these waters now one large side-wheel steamer, 'Lady of the Lakes,' and two tugs, with an addition, probably, of another large tug next season. Those vessels will pass down the whole length of Rainy River on their way out, and must consequently touch upon every man's homestead on the river, thus enabling him to take his produce to any market he pleases. In the meantime he may obtain a good price for anything he wishes to dispose of at Fort Frances or Rat Portage. At the former place there are now about sixty houses and 400 inhabitants—all necessary conveniences, four stores, post-office, school, blacksmith shop and church—and these have all arisen within three years. We have also Mr. Fowler's large saw-mill, where you may get your lumber, plain or dressed, doors, sashes, laths, shingles, &c. Mr. Fowler is further making arrangements for the importation of a grist-mill, to run in connection with his saw-mill, on the opening of navigation. \* \* \* \* \* We may also take into consideration the fact that the land on the opposite side of the river is quite as good as our own, and that the American Government will doubtless soon place it in the market. Our canal will shortly be completed, and through its gates the large lumbering trade (soon to be created) in the neighboring State, Minnesota, must pass. This will add much to the trade and commerce of Rainy River." A later issue of the same paper speaks of the favorable crops of the present year, the busy demand upon the new grist-mill, the establishment of a Hudson Bay Company's post at Sturgeon Falls, the summer-like weather prevailing in the fall, the construction of another steamer for the Rainy River and Lake of the Woods navigation, the arrivals of several new settlers, and other signs of a healthy, growing and prosperous community.

#### ADJACENT TERRITORY IN MINNESOTA.

As well remarked in the newspaper we have already quoted, it is not from the territory within Canadian jurisdiction alone that the Rainy River settlements are likely to derive advantage. While, from a distance of fully one hundred miles to the northward, the streams flow into Rainy Lake or River, and are thus made tributary to the trade and commerce of the settler in that district, the large area lying between the height of land in Minnesota to the southward and Rainy River, is also capable of being rendered a prolific source of wealth. The height of land which divides the source of the Mississippi from the waters that ultimately find their course to Hudson Bay, lies nearly parallel to and some 60 to 70 miles south of Rainy River, about midway between that river and the Northern Pacific Railway from Duluth to the west. The country is said to be well timbered, to yield large quantities of pine, and to contain, in the neighborhood of Lake Vermilion, rich mineral deposits. The Big Fork and Little Fork Rivers, emptying themselves into Rainy River, and the Vermilion River, falling into Namekagon Lake, may all be

utilized for conveying the timber and other products of Minnesota to a common focus at Fort Frances. That the settlers on the American side are alive to the advantages of traffic with Canada is shown by the following, clipped from the *Star* of October 29th :—"One of the settlers from the Minnesota side of Rainy River shipped a cargo of 200 bushels of potatoes to Rat Portage a short time ago, which he got sale for, as soon as landed, at prices ranging from seventy-five cents to one dollar per bushel. The same party has started with the second lot, which he has already disposed of, on his arrival at the Portage, to the railroad people."

#### PORT FRANCES LOCK.

The works at Fort Frances consist of a canal 800 feet in length, cut through the solid rock, about forty feet wide, with one lift of 24 feet 8 inches. The chamber of the lock is 200 feet long and 38 feet wide in the clear. The lowest depth of water on the sills will be 5 feet 6 inches, but it is rarely if ever known to be so low as that, and is ordinarily from 8 to 10 feet. The cost of the works to the Dominion Government has been \$250,000.

#### THE INDIANS.

The relations of the Government and white population of the territory to the Indian tribes must, necessarily, be an object of considerable interest and importance. The Indians of the country lying between Lake Superior and the Lake of the Woods are Saulteux of the Ojibway nation. They derive their name from Sault Ste. Marie, from the neighborhood of which they originally immigrated. In the southern division of the new territory they probably do not number over from 3,500 to 4,000 souls, nearly one-half of whom are settled in the vicinity of the Lake of the Woods and Rainy River.

#### NUMBER THREE TREATY.

These Indians, as well as some of the same tribe, settled on Lac Seul, are those embraced in what is known as Treaty Number 3, negotiated at the north-west angle of the Lake of the Woods, in 1873, by Lieut.-Governor Morris, with Messrs. S. J. Dawson and J. A. N. Provencher as joint Commissioners. This treaty settled all troubles or difficulties that had arisen out of the encroachments of Canadian settlers or surveyors on what the Saulteux had regarded as their lands. The negotiations afforded, too, a very excellent opportunity for testing the intelligence and general character of the tribe as there represented. Archbishop Taché, in his work,\* deplores the persistency with which the Saulteux cling to their pagan faith, and the habits and customs incidental to their unconverted condition. But although so hostile to christianizing influences, the Saulteux of this region are not deficient in many of the qualities that command respect. They are brave, high-spirited, and among themselves, very capable of self-government. The bands at Rainy River and Lake of the Woods meet frequently in Council, discuss their affairs very intelligently, and enforce sternly the rules and regulations considered necessary for the common welfare. While mostly retaining the primitive wigwam, and practising pagan rites, they are far more thrifty, prudent and industrious than many of their race. In addition to the products of the shore, the lakes yield them an unlimited supply of fish, principally white fish and sturgeon—the extensive marshes produce immense quantities of wild rice, which the Indians collect on a systematic plan enjoined by their self-imposed laws, and the same plant attracts vast numbers of wild ducks of every description which divide with the Indians the collection and consumption of the rice, with, however, this advantage on the side of the Indian, that, while the ducks can only eat the rice, the Indian, in addition to the rice, can also eat the ducks. When first visited by missionaries, these Indians were already culti-

\* Sketch of the North-West of America, p. 120.



vating maize, which they still raise on their clearings, a proof, at once, of their partial civilization, and the favorable nature of the soil and climate of the district. The main body of the Saulteux refuse to hold communication with the small band of Pigeon River, whom they regard as an inferior class, and look with supreme contempt on the little settlement at Islington, where, under missionary guidance, a christianized population, fifty or more in number, have made good progress in the arts of civilized life, especially agriculture. The Saulteux are keen at bargains, and managed to make a very good one under the Treaty of 1873. Lieut.-Governor Morris gives an amusing account of the negotiations.\* For four days they held aloof from meeting the Commissioners altogether. On the fifth, they attended in response to a peremptory summons. It then appeared that jealousies among themselves were the chief cause of delay, and that, so fearful were they lest one chief or band should obtain an undue advantage over others by privately communicating with the Commissioners, that they had set a guard over the Lieut.-Governor's house and Mr. Dawson's tent. Several days were consumed in listening to and refusing exorbitant demands, until matters at last came to a dead lock, and the Commissioners declared they would leave unless the Indians came to terms. "This," says the narrator, "brought matters to a crisis. The chief of the Lac Seul band came forward to speak. The others tried to prevent him, but he was secured a hearing. He stated that he represented four hundred people in the north; that they wished a treaty; that they wanted a schoolmaster to be sent them to teach their children the knowledge of the white man; that they had begun to cultivate the soil, and were growing potatoes and Indian corn, but wished other grains for seed and some agricultural implements and cattle." "This chief," says Mr. Morris, "spoke under evident apprehension as to the course he was taking in resisting the other Indians, and displayed much good sense and moral courage." He was supported, however, by Chief Blackstone, whose residence is at Pine Portage, and, the ice once broken, the business of the meeting went forward. But after some progress had been made, the spokesman of the Indians presented, with new demands, a request that fifty dollars annually should be paid to each chief, and a new suit of clothing for every member of the band, was capped by the still cooler proposal that they should all have *free passes forever over the Canadian Pacific Railway*. It will hardly be alleged, after this, that the Saulteux of north western Ontario have not made exceedingly good progress in the manners and customs of their white exemplars.

#### TERMS OF THE TREATY.

The treaty provides for the cession of all the lands within the following boundaries:† "Commencing at a point on the Pigeon River route where the international boundary line between the territories of Great Britain and the United States intersect the height of land separating the waters running to Lake Superior from those flowing to Lake Winnipeg; thence northerly, westerly and easterly, along the height of land aforesaid, following its sinuosities whatever their course may be to the point at which the said height of land meets the summit of the watershed from whence the streams flow to Lake Nepigon; thence northerly and westerly, or whatever may be its course, along the ridge separating the waters of the Nepigon and the Winnipeg to the height of land dividing the waters of the Albany and the Winnipeg thence westerly and north-westerly, along the height of land dividing the waters flowing to Hudson Bay by the Albany or other rivers from those running to English River and the Winnipeg, to a point in the said height of land bearing north forty five degrees east from Fort Alexander at the mouth of the Winnipeg; thence south forty-five degrees west to Fort Alexander at the mouth of the Winnipeg; thence southerly along the eastern bank of the Winnipeg to the mouth of the White Mouth River thence southerly by the line described as in that part forming the eastern boundary of the tract surrendered by the Chippawa and Swampy Cree Tribes of Indians to He

† Sessional Papers (Canada), 1875, No. 8, p. 15.

\* Sessional Papers (Canada), 1875, No. 8, p. 19.

Majesty, on the 3rd of August, 1871, namely, by White Mouth River to White Mouth Lake, and thence, in a line having the general bearing of White Mouth River, to the forty-ninth parallel of north latitude, to the Lake of the Woods, and from thence by the international boundary line to the place of beginning."

A reference to the map\* will show that this treaty, consequently, covers three-fourths of that portion of Ontario we have been describing as the western division of the territory embraced by the late arbitration. It extends, however, considerably beyond the boundaries of Ontario as assigned by the award, probably a little over one-third of the whole being north of the waters of Lac Seul and English River, or west of the Lake of the Woods. The area, by the cession, of which Ontario is directly benefitted, is bounded by Lac Seul and English River on the north; by the Winnipeg River, Lake of the Woods, and international boundary line on the west; by the international boundary line on the south; and by the height of land which first separates the waters of Lac Seul from those of Lake St. Joseph (the head of the Albany River), and then those flowing eastward into Lake Superior, from those flowing to Lake of the Woods and forming the Dawson Route. The whole area ceded is stated to be 55,000 square miles.† and of this we may rightly estimate 35,000 as coming within Ontario jurisdiction. From this have to be taken the Indian Reserves, the allotments of lands for that purpose not to exceed one square mile for each family of five persons. The right of hunting is to be continued to the Indians, subject to such regulations as may be prescribed by law, or to the limitations imposed by settlement.

#### SUBSIDIES AND PRESENTS.

The payments, in money or kind, made by way of purchase or presents, once for all, in return for the cession, were as follows:—‡Twelve dollars per head for every man, woman, or child belonging to the lands there represented; for every band who were then cultivating, or should hereafter cultivate the soil, two hoes for every family actually cultivating; also one spade per family as aforesaid; one plough for every family as aforesaid; one sythe for every family as aforesaid; and also one axe and one cross-cut saw and handsaw, one pit saw, the necessary files, one grindstone, one augur for each band; and also for each chief, for the use of his band, one chest of carpenters' tools; also for each band, enough of wheat, barley, potatoes and oats, to plant the land actually broken up for cultivation by each band; also for each band, one yoke of oxen one bull and four cows. In addition to these gratuities, the sum of fifteen hundred dollars is to be spent annually in the purchase of ammunition and nets for the Indians; a sum of five dollars per head is to be paid to each Indian also, annually; each duly recognized chief is to receive a salary of twenty-five dollars per annum, and each subordinate officer—not exceeding three for each band—fifteen dollars per annum. Each chief and subordinate officer is also to be provided with a suit of clothing once in every three years. Finally, in recognition of the closing of the treaty, each chief received a flag and medal. Schools for instructions were also to be established wherever the Indians desired it, and all intoxicating liquors were to be excluded from the reserves.§ In connection with the granting of the medals, an incident occurred during the conference, certainly creditable to the astuteness of the Saulteux, if not to their knowledge of the precious metals. Mawedopiniis, the chief who acted as principal spokesman, who had obtained a medal given to one of the Red River chiefs, declared it was not silver, as it turned black, and, contemptuously striking it with his knife, protested he and his friends would be ashamed to wear it.

\* Map of North-West Territory, &c., exhibiting tracts ceded by Indian Treaties, accompanying Report of Minister of Interior, 1876.

† Lieutenant-Governor Morris's Report, Sessional Papers (Canada), 1875, No. 8, p. 18.

‡ Sess. Papers (Canada), 1875, No. 8, p. 20-21.

§ Lt-Gov. Morris's Report, Sess. Papers (Canada), 1875, No. 8, p. 17.



## PROGRESS IN CIVILIZATION.

In the report of the Minister of the Interior, for 1877, the following passage occurs:—\*“The Indians who reside about eighty miles west of Rat Portage, within the limits of Treaty No. 3, are represented to be making satisfactory advancement in the arts of civilization, and stock-raising to some extent is ventured on; and altogether a commendable spirit of enterprise has developed itself among them. At Lac Seul, also the progress of the Indians is said to be quite marked.” The Indians west of Rat Portage are, of course, beyond the Ontario western boundary.

## NUMBERS INCLUDED IN TREATY NO. 3.

The accounts of the Indian Department, for 1877, show that the Indians receiving annuities under Treaty No. 3 numbered 2,890, classified as follows:—9 Chiefs, 26 Headmen, 2,855 Indians. The annuities paid in 1877 amounted to \$14,890; the total sum placed to the credit of the bands being \$17,440. The tribe in this region counted not many years since 20,000 souls. Small-pox has reduced them to their present numbers.

## GEOLOGICAL FEATURES.

The reports of the Crown Lands Department of Ontario refer to the numerous mining locations granted within the area bounded on the west and north of Lake Superior by the height of land, and the whole of the interior region west of Lake Superior has been the subject of geological surveys, very full accounts of which have appeared in the reports of the Geological Branch of the Department of the Interior.† That the geological conditions are indicative of valuable mineral deposits, there can be no doubt. A band of rocks running south-west from Lake Shebandowan—in the neighborhood of which gold has been found in considerable quantities—to the international boundary, and thence to Lake Vermillion in Minnesota, is rich in auriferous deposits. Around Jackfish Lake they are probably most marked, but specimens of gold and gold ore are found along the whole line of country above indicated. The entire region, also, of the Rainy River invites further explorations. Mr. Dawson in his report (1874)‡ says:—“The Indians, both of Rainy Lake and Lake of the Woods, have among them specimens of native gold and silver ore, which they affirm is to be found in places known to them in abundance, and the rock formation is such as to corroborate their statement. Iron ore is plentiful in many sections, and charcoal for smelting easily obtainable. Granite, which report says is equal in texture and fitness to the best imported specimens, is to be found at the Lake of the Woods, and the steatite, of which the Indians make pipes, a very valuable article for the construction of furnaces, is quite abundant at Rainy Lake and Sabaskin.” It was stated in evidence before the Committee on Immigration and Colonization, at Ottawa, last year,§ that coal had been discovered in the vicinity of Rainy River. There does not appear to be any reason, on scientific grounds, for doubting the existence of coal in that region, but its quality or the extent of the deposits, if they exist, are subjects for further inquiry before much reliance can be placed on the value of the alleged discovery.

The mineral resources of the district intervening between the height of land and Lake of the Woods must be mainly predicated upon the investigations of the geologist, and the information he supplies. Professor Robert Bell in a series of notes on the geological formation of the country on the line of the Dawson Route, writes as follows: ||—“Laurentian gneiss, running in a west south-westerly direction, extends from a point on the south shore of Lac des Mille Lacs, about four miles east of Baril

\* Sessional Papers (Canada), 1875, No. 10. Report Deputy-Superintendent General, p. 15.

† Reports Geological Surveys (Canada), 1872-3, 1873-4, by Professor Bell.

‡ Public Works Report, 1875, Appendix 23.

§ Report of Committee, page 139.

|| Geological Survey, 1873-4, page 87.

Portage, all along the chain of lakes which this route follows as far as Sturgeon Lake. Mica schist begins near the inlet of Sturgeon Lake, and continues along the route as far as Cross Lake. The Maligne and Island Portages occur in this interval. The mica schist appears to be all of the same character. It is moderately coarse-grained, and has a white shining appearance with black specks on fresh fracture, and often holds small hard patches of pebbles of a granular quartzose character like sandstone. At Cross Lake the mica schist becomes much mixed with reddish granite in the form of veins and intruded masses, the proportion of granite increasing in approaching Nequaquon Portage, at the western extremity of the lake. In the western part of Cross Lake nearly all the points and islands are formed of granite. At Nequaquon Portage the rock consists of a dark grey mica schist, interstratified with gneiss, the latter prevailing towards the west end of the portage where it has entirely replaced the former. \* \* \* The rocks along the route from Nequaquon Portage towards Kettle Falls consist partly of gneiss and partly of a dark, coarse, splintery, shining mica schist, to a point on Nemakon Lake, about six miles west of the narrows by which we entered it. Along the east side of Nequaquon Lake, and approaching the main body of gneiss in the western part of Nemakon Lake, the gneiss and mica schist are interstratified with each other, while between the two latter the rock consists of mica schist alone, with some veins and masses of granite. Proceeding westward from Kettle Falls through Rainy Lake, gneiss continues to prevail for about twenty miles. The gneiss at that locality holds micaceous bands and intruded waves of coarse reddish-grey granite. \* \* \* A broad band of schist covers the central part of Rainy Lake. This appears to be the same band which follows the Seine River, and is probably identical with the one which covers Bush Creek. The Indians at Fort Frances manufacture pipes from a grey slate which occurs on the long point between the mouths of the Manitou and Seine Rivers. Mr. Robert Pither, the Indian Agent at Fort Frances, showed me specimens of light colored granular iron pyrites, which, he informed me, were taken from a thick band in the same locality as the pipe-stone. I was shown a specimen of coarse silvery quartzose mica schist, which is said to occur, *in situ*, in the above neighborhood. Mr. Pither likewise exhibited me a sample of copper pyrites in quartz from a vein on Rainy Lake, but he was not certain of the exact locality at which it occurs. He confirms the accounts of Mr. Dawson and others as to the occurrence of Huronian schists along the Seine River. The rock at the falls of the Rainy River is a massive grey granitoid gneiss. Gneiss is also seen on the river about a mile below Fort Frances, and again at about ten miles. An expanse of massive-looking rocks, apparently Huronian schists, occurs at the mouth of Rapid River, which joins Rainy River from the southward, about fifteen miles from the Lake of the Woods. The banks of Rainy River, except on approaching the Lake of the Woods, are generally from fifteen to twenty feet high, and are composed of clay and drift materials, in which pebbles and boulders of a yellowish-grey limestone are plentiful. There is reason to believe, however, that, under these superficial deposits, a broad band of Huronian rocks covers the lower section of the river." The information thus afforded, while not absolutely conclusive, is so far indicative of mineral deposits of greater or less richness in the region we have been describing, as to suggest the propriety of a careful exploration, with the special object of ascertaining more thoroughly the value of the district for mining purposes. If to an abundance of splendid farming land, extensive pine forests, and a water way open to a market of which the demand will be unlimited, the country traversed by the Dawson route should develop the mineral resources indicated by its geological formation, it will prove a rich acquisition both to the commerce of Ontario and the revenue of the Government.

#### LAC DES MILLE LACS (VIA LAC SEUL) TO WINNIPEG RIVER.

While the exigencies of travel, and the need felt for a highway through Canadian territory to the North-West, have done much to further a knowledge of the features of the southern portion of the country we are describing, scientific explorations



have been made along its northern limits by the officers of the Geological Survey. Starting from Lac des Mille Lacs, Messrs. Selwyn and Bell, in 1872, travelled by canoe the whole distance of 461 miles to the Winnipeg River, encountering no more serious obstacles than portages, which were easily crossed, or the danger of being lost in the labyrinthine system of lakes, streams and rivers with which the whole route is more or less intersected.\* A very brief sketch of the journey, condensed from the published reports, will give a fair idea of the nature of the country visited. Leaving Lac des Mille Lacs on the 29th of August, the party on the 10th September were camped on Sturgeon Lake, having passed over twenty-five portages, altogether 9,836 yards in length, in a distance of 100 miles. Being deserted by their Indians, the travellers fortunately recruited their force by the voluntary services of half a dozen Pacific Railway surveyors' men, who were met with on the way, and who desired to return to their homes on Red River. On the 16th of September the camp was on the line of the Railway Survey, from which Point the Sturgeon Lake River was descended about ten miles to the head of the second rapids in the portage, 210 yards in length. A journey of four miles further brought them to the falls by which Sturgeon Lake River discharges into Lake Minnetaki, there being in that distance three portages, respectively 1,300, 250 and 1,280 yards in length. The water, however, was then at its lowest stage; when the river is full the rapids may be descended in a canoe. It is between Minnetaki Lake and Lac Seul that the route becomes most intricate, and, but for the fortunate appearance of a wandering Indian, who acted as pilot, the journey might have had a premature ending. One portage, 1,758 yards in length, being crossed, the canoes entered a small river flowing directly into Lac Seul, and on the 20th September, the Hudson Bay Company's post on that lake was reached, 81 miles from the camp on Sturgeon Lake, the trip in that distance involving portages, thirteen in number, and aggregating 7,848 yards in length. The Hudson Bay post on Lac Seul, appears from the maps to be situated about midway between the eastern and western extremities of the lake. Some idea of the extent of this sheet of water may be formed from the fact that, from the post to the head of the English River, at the western end of the lake, the distance is 52 miles. The passage down the English River to its junction with the Winnipeg was accomplished by the 2nd of October, the portages to be crossed being twelve in number and measuring altogether 5,535 yards.

As to the general aspect of the country, Professor Selwyn, after urging the importance of a mineralogical survey of "the great parallel bands of schistose and slaty strata traversing this region," and pointing out that gold, copper and iron are associated with similar strata, says:—"Except such as arises from causes connected with the presence of Huronian rocks, as above described, or with the occurrence of superficial deposits of sand, clay, &c., but little variation is perceived in the general aspect of the country on the route which we traversed, between Lac des Mille Lacs and Lake Winnipeg. On the mainland, and on the innumerable islands, the shores of the lakes and rivers generally present bare rock surfaces. Bold cliffs and precipices are rare; the rocks either rise abruptly from the water for fifteen or twenty feet, or else slope gently upward till above the line of highest flood; they are concealed beneath a thin coating of moss-covered soil, supporting a thick undergrowth of brushwood, and a forest of poplar, aspen, birch, spruce and small tamarack, with, occasionally, a few red pine trees, standing singly or in small clumps, and which, though considerably taller than the rest of the forest, and hence conspicuous at a distance, are rarely of large size. The generally small size of the timber, however, is evidently not altogether due to the effects of unfavorable soil and climate, but in a great measure to the fact that nearly all the older trees have been destroyed by the successive fires that at one time or other have devastated every part of the country, and the effects of which are often conspicuously marked by the tall dead branches and charred trunks which still tower above the younger forest. There are

\* Geological Survey, 1872-3, p. 87.

† Geological Survey, 1872-3, p. 16.

no prominent hills or even ridges; the highest elevations do not probably exceed four or five hundred feet above the intervening waters, and I think it is no exaggeration to say that the latter occupy fully one-half of the whole surface area of the region. The surface is generally undulating and broken, and often rocky, but occasionally both lakes and rivers are bordered either by extensive swampy flats, or by banks of stratified sand, silt and clay, which often rise terrace-like at a short distance from the water's edge. The point on which the Hudson Bay Company's post stands is formed of these deposits, and to the westward of the post, along the north shore, they are exposed in cliff sections for several miles. At the junction of the Mattawa and English Rivers, where a small Indian village and trading post is situated, presided over by Chief Pierre, there are similar banks of sand and sandy clay resting on the ordinary grey Laurentian gneiss, which is exposed along the water's edge. The banks here rise steeply to about thirty feet above the water, and for some distance inland the country seems to be tolerably level, and the soil on this part of the river appears to be generally of fair quality. Small patches of it are cultivated by the Indians, who succeed in raising excellent potatoes, carrots and onions, and there is no doubt that many crops would flourish equally well, and would be cultivated by them if they were supplied with seed. Throughout the region, especially from Sturgeon Lake westward to Lake Winnipeg, there are considerable areas of soil suitable for cultivation.

#### THE LINE OF THE CANADIAN PACIFIC RAILWAY.

Following the course of the Canadian Pacific Railway, as located and partially constructed between Fort William and Rat Portage, on the Lake of the Woods, we gather a fair idea of the character of the country from the reports of the engineers.\*

From Fort William to Lac des Mille Lacs the route has already been described. From thence to the arm of English River, crossed by the railway 113 miles from Thunder Bay, the ground is slightly undulating, and although there are several rock cuttings they are generally in short lengths. Still their frequent presence denotes a rugged and uninviting surface. From the 113th to the 160th mile, where Little Wabigoon River is reached, the country is rolling, containing numerous lakes and swamps, with very irregular rocky ridges. From Little Wabigoon to Thunder Lake, the latter 206 miles west from Thunder Bay, the country is very slightly undulating, but where excavations occur they will be in rock. For the next 58 miles the line traverses a heavy rolling country with numerous lakes, swamps and rocky hills and some good land interspersed. Lastly, from the 264th mile to the 293th, at Rat Portage, the section is over a very rough rocky country, indented with numerous lakes and hollows and containing very little soil. It is evident that the route for the railway has thus far been chosen with an eye mainly to engineering purposes and objects, and, probably, to secure as the primary desideratum the most direct line to the Red River, but uninviting as the section it covers may appear from these descriptions, it must not be forgotten that the very fact of a railway passing through it gives value to what would otherwise be a waste, and justifies an expenditure of labor and capital in places, that without it, would never entice either to attempt their reclamation. Should mineral wealth be developed on the line of the railway route, as there is good reason to anticipate, it will not be long before whatever portions of the country can be made cultivable will be discovered and appropriated.

#### THE CLIMATE.

The ability, not only to live, but to enjoy life, in an atmosphere that, to the inhabitants of warm or very temperate regions appears to be almost incredibly severe, is tested every day for several months in the year by the hardy population of Canada. A very low temperature has few terrors, and is often attended with less actual suffering, or inconvenience, than the raw, damp chilliness of a milder climate.

\*Canadian Pacific Railway Report, 1877. Appendix Z, p. 357 *et seq.*



By no one need the western portion of north-western Ontario be really dreaded. Mr. Sandford Fleming, in his Report of Progress, laid before Parliament in 1874, referring to the climatic peculiarities of the regions traversed by the Canadian Pacific Railway, says:—"Throughout the whole of the woodland region (Nipissing to Red River), the depth of snow is generally less on an average than it is at the City of Ottawa. Only in one locality on the routes favorable for the railway, between Manitoba and Lake Nipissing, is the snow found generally so deep as at this city (Ottawa). The locality referred to is in the immediate neighborhood of Lake Superior, where the route approaches the coast; here the lake appears to have a local influence on the humidity of the atmosphere, and, in consequence, on the amount of snow-fall. \* \* \* From Lake Nipigon to Manitoba the snow ranges from 70 to less than 50 per cent. of the depth at Ottawa." A witness examined by the Committee on Colonization and Immigration at Ottawa, in reply to a question respecting the climate of the Rainy River Region, replied that was "similar to Manitoba."† This statement would probably apply to the larger portion of the country, the character of which we are now considering. The intensity of cold will, of course, vary according to the elevation or sheltered position of different localities. The Hon. Senator Sutherland, of Manitoba, before the above-named Committee, in 1876, said, with regard to the winters in that Province:—"‡ The frost penetrates on exposed places to the depth of from three to four feet, that is where the land is not covered at all with snow. Where it is covered with snow it is seldom frozen deeper than eighteen inches. Vegetation begins and progresses before the frost is all out of the ground, and we generally begin sowing when it is thawed to the depth of six inches, at which time the surface is perfectly dry. We believe this frost helps the growth of crops, owing to the heat of the sun by day, causing a continual evaporation from the underlying strata of frost. \* \* \* We have occasional (summer) frosts; generally one frost about the first of June, but seldom severe enough to do any material injury to the growing crops, and showers are frequent during spring and summer. The average depth of snow throughout Manitoba is about 20 inches, and is quite light and loose." That the winter does not, in the region between Lake Superior and Lake of the Woods, encroach to an inconvenient extent upon the open season, is incidentally shown by a circumstance alluded to by Mr. Dawson, in his report to the Government of the Dominion, in 1874. § At the close of the season of 1873, orders were suddenly received to prepare for the transportation of a body of the Mounted Police over the Dawson Route. By the time the force had reached the north-west angle, winter had set in with great severity, and the result was, that a large force of workmen, employed in the transportation service, were winter bound. It is in making this statement Mr. Dawson incidentally mentions that the smaller lakes near the height of land were frozen over on the night of the 28th October, and that, although every effort was made to keep the navigation open, the thermometer fell on the night of the 2nd November to 6° (Fahrenheit), completely stopping the tugs. "But," he adds, "winter had set in earlier than ever before known in the short experience of the white man, or even in the knowledge of the Indians." In the report of the same gentleman to the Legislative Assembly of Canada, in 1858, he says: || Blodget, in his isothermic chart, showing the mean distribution of heat for the summer, places the line of 60° to the north of the Lake of the Woods, and that of 65° at Fort Garry. \* \* \* That a great precipitation of rain takes place at and near the highlands which separate the waters flowing to Lake Winnipeg from those that run towards Lake Superior, is evinced by the magnitude of the rivers, as compared with the area they drain. The climate, however, seems to be milder on the western slope of the highlands than on the eastern." The following record, by Sir John Richardson, of

\* Report Canadian Pacific Railway, 1874, p. 34 *et seq.*

† Report, p. 169. Journals House of Commons (Canada), 1878.

‡ Report of Committee, p. 39, Journals House of Commons (Canada), 1876.

§ Public Works Report, 1874. Appendix 23. Sess. Papers (Canada), 1875.

|| Journals Leg. Assembly, Canada, 1858. Appendix 36.

the progress of the seasons at Fort William, will give some idea of the climatic conditions on the more favorably situated western slope of the height of land above referred to: \*—

- Feb. 9.—Thermometer at noon, 39° F.  
 March 1.—Temperature, 61° in the middle of the day.  
 April 2.—The sap of the sugar maple began to run.  
 " 9.—First wild ducks seen.  
 " 10.—Butterflies, blueflies and gulls noticed.  
 " 20.—General thaw commences. Ground frozen to a depth of 3 ft. 9 in.  
 " 30.—River Kaministiquia partially open.  
 May 2.—River free of ice.  
 " 10.—The birch tree and maple budding.  
 June 15.—Swallows building.  
 July 15.—Barley just coming into ear. Potatoes in flower.  
 " 31.—Raspberries ripening.  
 Aug. 8.—Red currants and blueberries perfectly ripe.  
 " 19.—Barley ripening.  
 " 29.—Peas quite ripe.  
 " 31.—Swallows have disappeared.  
 Sept. 7.—Leaves of birch and aspen change colour.  
 " 13.—Potatoes, cabbage, turnips and cauliflowers nipped by frost.  
 Oct'r 7.—Leaves of the birch and aspen falling.  
 Nov'r 3.—Small lakes frozen over.  
 " 9.—River covered with a sheet of ice, which broke up again.  
 Dec'r 1.—Ice driving about by wind.  
 " 17.—Thunder Bay frozen across to the Welcome Islands.†

Another authority states that the average period of the Kaministiquia freezing over is from the 3rd to the 15th of November, and that it becomes free from ice between the 20th and 23rd of April. Bearing in mind the tendency to an amelioration of the climate in pursuing a westerly course, and the comparison instituted between the Rainy River region and Manitoba, there certainly are no climatic difficulties in the way of the colonization of the country lying between Lake Superior and the Lake of the Woods.

## EASTERN DIVISION.

### LAKE SUPERIOR TO JAMES' BAY.

The possession of the territory lying north of the height of land and extending to the shores of Hudson Bay opens up an entirely new field to energy and enterprise. The southern shore of the Bay, which forms under the late award the northern limits of Ontario jurisdiction, is but little further from Toronto than the City of Quebec; a railway from the present termination of our northern lines to Moose Factory need be accounted a no more chimerical scheme than would the proposition have been considered to connect Toronto with the ancient capital of the Lower Province by a similar means fifty years ago; and the terrors of frost and snow that, somehow or other, are associated in men's minds with the Hudson Bay region, are certainly not more appalling than were the stories of hardship and suffering supposed, as but yesterday, to attach to a settlement in what is now the populous and busy capital of Manitoba. The broad rivers that flow northward and eastward into James' or Hudson Bay, seem to invite the voyager by the facilities they offer for his journey to the great northern sea or inland lake whose coasts he may desire to explore,

\* Arctic Exploring Expedition, Vol. II., pp. 227-8.

† Journals Leg. Assembly (Canada), 1858. Appendix 3.



and the head waters of our St. Lawrence or lake navigation, approach near enough to make the journey one of comparative ease to men inured to the experiences of Canadian pioneer life. These rivers could all tell a tale of strange doings in past times to which their waters have been witness; when Hudson Bay Company's retainers contended for the rights secured to them under their monopoly; when their traders were intercepted by rivals by whom, and towards whom, rough measures were by no means repudiated; when the "French from Canada" outbid the Company's factors for the Indians' hunting spoils, and bore them away hundreds of leagues overland instead of leaving them to find their way by the annual ship from York Factory to Europe. To-day, when all strifes and hostile competition are at an end, the Indians and trappers still bear their skins by the Nelson, the Albany, or the Moose, to the respective forts, and it is but some thirty years since a force of British troops, with ordnance, and accompanied by women and children, made a safe passage, by the Hayes River, from York Factory to Norway House, and thence by Lake Winnipeg and the Red River to Fort Garry, reaching their destination in thirty days. The country constituting what we shall call the eastern half of north-western Ontario, will be bounded by an imaginary line drawn north-west from the point at which the height of land, north of Lake Nepigon dips to the southward, to the head of Lake St. Joseph, the source of the Albany River. Thence easterly along that river to its mouth, thence east along the south shore of James' Bay, nearly to its south-east angle, then south along the boundary line between Ontario and Quebec, and finally westward along the height of land, on the north of Lake Superior and Lake Nepigon, until the starting point is reached. But in order to estimate properly the value of the possession of this region, it will be necessary to take into consideration the trade and resources of the country lying north of the Albany, its connections with the trade of the North-West, and also the promise of advantages accruing from a traffic in the products of Hudson Bay itself. We shall first notice, however, the means and routes by which the Bay is accessible from the settled portions of Ontario or other parts of the Dominion.

#### ROUTES TO HUDSON BAY.

Several large rivers flow into James' Bay, which is simply a contraction of Hudson Bay at its southern extremity. From the south come the south branch of the Moose, or the Mattagami, as it is called in the country, the Missinibi or north branch of the Moose,—both streams uniting before discharging themselves into the Bay,—the Abbitibbe River coming from the south-east, which also joins the Moose and seeks its outlet at the same point; the Albany from the south-west, which enters the Bay about one hundred miles west of the Moose; the Harricanaw, which crosses the provincial boundary line some distance south of the Bay from the east; the Notaway and Rupert's River which are wholly to the eastward of that boundary, and enter the Bay at points on its south-eastern shore corresponding very nearly to the positions of the mouths of the Moose and Attinibee on its south-western coast; and, further north still, the East Main or Slade River entering the Bay at a point nearly opposite the mouth of the Albany. Following the western shore of Hudson Bay to the northward we first come to the Severn River, and then still further north to the Nelson and its southern branch, the Hayes River, at the mouth of which York Factory is situated. The Nelson River forms the channel by which the drainage of the whole region of the Lake of the Woods, fed by innumerable Rivers and streams, of Lake Winnipeg which receives the waters of the Lake of the Woods, of the Winnipeg, Red, and Assiniboine Rivers, and of the mighty Saskatchewan with its confluent, find their way to the ocean. North of the Nelson is the Churchill, a large river, and still further to the north the Seal River. It is in the rivers of the south and west we are primarily interested in connection with our present inquiries. Recent explorations made under the direction of the Dominion Government have afforded very ample information as to the routes to James' Bay through what is now, under the award, Ontario territory, from the south and south-west. A brief de-

scription of each survey will present a tolerably clear view of the general character of the country and the routes traversed.

#### LAKE HURON TO MOOSE FACTORY.

Setting out from the north shore of Lake Huron by way of the White-fish River, the Wanapiti River and Lake, Professor Bell, in 1865,\* passed, by way of the Sturgeon River—which flows into Lake Nipissing and must not be confounded with a river of the same name west of Lake Superior,—through a succession of lakes to the head of the east branch of the Montreal River, a tributary of the Ottawa; thence *viâ* Pigeon Lake to Grassy River, the waters of which flow northwards to Lake Shatagami. From this Lake by a six mile portage, Lake Mattagami was reached, and a passage down the Mattagami to the south branch of the Moose or Mattagami River effected. The river was surveyed to its junction with the north branch of the Moose or Missinibi. The party then passed down the main stream to Moose Factory, a short distance south of the mouth of the river and open bay. Mattagami Lake, which gives the river its name, and which, if not the source, may be regarded as one of its sources, is about 26 miles in length. For five or six miles the river, after leaving the lake, flows smoothly, but then takes a plunge, first by a fall, and then a rapid, thus accomplishing a descent of forty-five feet. This impediment to navigation is overcome by a portage known as Fishing Portage, a mile in length, on the west side of the river. At a distance of a mile and a-half from Fishing Portage the river enters Kenogamissee Lake, twenty-two miles in length. The united length of the two lakes and intervening river supplies a navigation of some fifty-four miles with one portage a mile long as the sole interruption. From the foot of Kenogamissee Lake to Moose Factory is a distance of  $216\frac{1}{2}$  miles, divided as follows:—

From Kenogamissee Lake to a (first) brook at a S.E. bend about N.E.....	12	miles.
To second brook at a N.E. bend about N .....	3	“
To a third brook to a S.W. bend about W .....	5	“
To Muckwa Powitik (Bear Rapid), about N.....	66	“
To foot of Long Portage to junction of Missinibi Branch, about N. 42 deg. E.....	39 $\frac{1}{2}$	“
From junction of Missinibi to Moose Factory, about N. 52 deg. E .....	46	“
Total.....	216 $\frac{1}{2}$	miles.

Long Portage is the last of eighteen portages in the above distance. It is four miles in length and avoids a descent of 190 feet, the three portages above it being represented by a fall in the river of 195 feet. Adding forty feet for the intervening space the total descent in 10 miles is 425 feet. On leaving Kenogamissee Lake the river falls some 117 feet in three-quarters of a mile, but the intervening portages are described as “short, with a comparatively slight fall in the river at each,” so slight, in fact, that canoes can be frequently taken up and down with a half load. Numerous streams help to swell the Mattagai in its northward course the principal one, besides the Missinibi, already mentioned, being the Abbitibbe which joins the Mattagami 17 miles south of Moose Factory. The most interesting fact, perhaps, in the foregoing brief sketch of the Mattagami's course is the existence of a stretch of ninety miles inland from James' Bay, with no serious impediment to navigation whatever.

#### MOOSE FACTORY TO MICHIPICOTON.

Leaving the topographical and productive features of the country watered by the Mattagami, to be noticed subsequently, we will now turn southward and

\* Geological Survey, 1875-76, p. 294.



accompany Mr. Bell on his homeward trip, his objective point being the River Michipicoton, on Lake Superior, probably the nearest point on the navigable waters of the St. Lawrence chain to James' Bay, and which, owing to the wide reach of country, extending from Lake Huron northwards, before the height of land is crossed, and the sources of the Moose are reached, must, in the absence of roads or railroads, be one of the most natural and accessible routes to Hudson Bay.\* We have already traced the Mattagami or South Branch of the Moose to its union with the North Branch or Missinibi and thence to James' Bay, at Moose Factory. The return trip will therefore commence at the junction of the two streams. In a straight line the distance from Round Bay,  $4\frac{1}{2}$  miles below Long Portage, to the outlet of Missinibi Lake is 113 miles. Following the course of the river the distance is much greater. The portages, twenty in number, are as follows:—

1. Long portage.....	1 mile.
2. Storehouse portage.....	$\frac{1}{2}$ "
3. Congening House portage .....	866 paces.
4. River side portage.....	673 "
5. Kettle portage.....	100 yards.
6. Black feathers portage.....	$\frac{1}{4}$ mile.
7. Rocky Island portage.....	160 paces.
8. Sandy Bay portage.....	85 "
9. Sharp rock portage.....	87 "
10. Beaver portage.....	455 "
11. Sugar loaf portage.....	77 "
12. Pond portage. Length not stated.	
13. A portage sometimes navigable.....	200 "
14. St. Paul's portage.....	178 "
15. St. Peter's portage.....	330 "
16. Okandago (or Greenhill) portage.....	1634 "
17. Wavy portage.. .....	110 "
18. Island portage.....	431 "
19. Foot-of-swampy-grounds portage .....	353 "
20. Keg portage.....	360 "

In the interval between the outlet of Missinibi Lake and the mouth of the Michipicoton there are seven more portages. Following the general course of each of the stretches above given, the total distance from Moose Factory to the mouth of the Michipicoton is  $31\frac{1}{2}$  miles, or in a straight line  $281\frac{1}{4}$  miles. In round figures it may therefore be said that, at this point, the waters of Lake Superior are separated from those of Hudson Bay by a distance of a little over 300 miles. The number of portages varies considerably with the season and the state of the rivers and their feeders. In many cases, with a light load, the rapids can be wholly overcome, and a recourse to portaging avoided.

Missinibi Lake is a fine sheet of water twenty-four miles in length and at about eighteen miles from the outlet a bay opens off the north-east side and runs back north-east, parallel to the main body of the lake about nine miles. "On the south-east side of the lake, fifteen miles from the outlet," says the report, "a river falls a considerable height over the rocks into the lake. It is called Wi-a-sitch-a-wan or "Water shining from Afar." The country traversed by the Missinibi must be of a generally level character, for, according to Mr. Bell, the first hills seen from the river after leaving Moose Factory were immediately north of Missinibi Lake. It is doubtful, however, whether either of the two routes above described is the true one, if the object be to secure the easiest means of access to the waters of Hudson Bay from the great lakes. A more advantageous route will probably be one from the north shore of Lake Nepigon to the main stream of the Albany, or still better,

\* Geological Survey, 1875-6, p. 327.

one from the mouth of Black River, on Lake Superior, by way of Long Lake, and a southern branch of the Albany, joining the main river at about 150 miles from its mouth.

#### BLACK RIVER (LAKE SUPERIOR) TO THE ALBANY.

This route appears, from the information at command, to possess the greatest natural advantages. After curving round Lake Nepigon the height of land dips suddenly to the southward, forming a sharp bend—or rather loop, for it immediately recedes to the northward again—opposite to the mouth of the Black River. In this loop or bend lies Long Lake, a narrow sheet of water fifty miles in length, its southern end being one mile north of the height of land, and only twenty-two miles from Lake Superior. Between the height of land and Lake Superior water communication exists; the Black River being navigable by light canoes for its whole length. But, as portaging would be necessary at several places for heavy freights, and as there is an intervening space between the waters running north and south, respectively, which must, in any case be overcome, it is possible that, whenever a scheme is devised for utilizing the navigation of Long Lake as a route to Hudson Bay, the first effort will be to secure an easy method of land conveyance from Lake Superior to the nearest long stretch of navigable water. Although the country on the north coast of Lake Superior is generally rugged and rocky, the Canadian Pacific engineers who have surveyed a line of railway from Lake Nipissing to Nepigon River, which passes between the height of land south of Long Lake and Lake Superior, do not represent this section as being at all particularly formidable from their point of view, although they would traverse it longitudinally, while a road, tramway or railroad from Lake Superior to Long Lake would cut it laterally. The elevation of Summit Portage is given by Mr. Bell as 489 feet above the Lake Superior level, while Long Lake is 466 feet above Lake Superior. From Long Lake, with its fine stretch of fifty miles of clear navigation, flows the Kenogami River, marked as English River on some of the maps, but that name is appropriated by so many other streams that it will be more convenient to use the Indian designation.

As considerable interest may attach to this route, it may be well to describe the Kenogami in Mr. Bell's own words. He says: \**“Leaving Long Lake the Kenogami River winds for two miles along open marshes, on which the Hudson Bay Company's men cut hay for the use of the cattle at Long Lake House; the general course of the river for the first nine miles is N. 10° E. In this section the first portage occurs at three, and the second at seven miles down, and between them, on the west side, Kenogamishish, or Little Long Lake River, enters at five and Manitowamaig, or Devil Fish River, at six miles from Long Lake. From the outlet to the first of these tributaries, the river is only from a chain and a-half to two chains wide; but below them it expands to four chains. Further down it continues to increase in width still, at the end of nine miles (following the stream) from Long Lake, it averages ten or twelve chains. At the end of nine miles from Long Lake, the river bends round, running N. 86° E., in a straight line for eight miles; then it enters the west side Mani-gwa-gami or Pine Lake, at right angles, about two miles from its southern extremity. Portages three to seven occur in this stretch, and a river enters from the north. The main body of Pine Lake, which runs N. 12° E., is about seven and a-half miles long, and one and a-half wide. At a mile and a-half from its northern extremity, a channel, ten chains wide, leads into the lower division of the lake. This runs N. 25° E., and is three and a-quarter miles long and one mile wide. About one and a-half miles from Pine Lake we reach the eighth portage, and immediately below it Arm Lake, which is about three miles long, and lies at right angles to the general course of the river. The ninth portage is passed at about two miles below Arm Lake, and half a mile further on the river enters Ka-pees-a-watan Lake, two miles long, in which there are several low islands. Mani-gwa-gamish or Little Pine River, flowing from a lake of the same name, enters the south side of this lake, and the*

\* Geological Survey, 1870-1, p. 338.



Wa-big-a-no or Mouse River, comes in from the same side, about two miles in a straight line below the lake. A third stretch of the river, which has a nearly east course below Pine Lake, terminates with a rapid a mile and a-half long. This is avoided by a portage (the eleventh), the tenth one being a mile higher up. The fourth reach of the Kenogami River bears N. 45° E., and is thirteen and a-half miles long in a direct line. It embraces portages twelve to seventeen and terminates on the eighteenth, which is the last to the junction of the river with the Albany, on which canoe navigation is uninterrupted to the Bay. The Atick or Deer River enters from the north, between the sixteenth and seventeenth portages. The fifth reach bears N. 80° E., and was followed for twenty-one miles, when we reached Pembina Island, which, although not large, is easily recognised by a conspicuous light-colored bank, about thirty-five feet high, running for about a mile along the north side of the river immediately above it. Throughout this last stretch the river is shallow, swift and sometimes rapid. In the last twelve miles explored it spreads in several places among low islands, and flat-lying limestone is exposed in the bed of the river. In the same interval it receives the Mun-did-i-no and Wa-tis-ti-gum Rivers from the north, and the Pe-wo-na or Flint River from the south. The following register is given of the portages on Kenogami River:—

Chutes. Fall in River.

1.	14	20	feet.	Trail level and dry. Carry canoes.
2.		7	"	Trail level and dry. Wade, light canoes.
3.	12	22	"	Banks of gravelly earth. Carry canoes.
4.	9	25	"	Burnt land. Sandy trail. Wade, light canoes.
5.	6	12	"	Run light canoes.
6.	3	4	"	do do
7.	34	24	"	Steep bank at lower end. Carry canoes.
8.	4	3	"	Run light canoes.
9.	2	10	"	Over rocks. Carry canoes.
10.	6	12	"	Lower end steep and rocky. Carry canoes.
11.	120	75	"	Trail level but intersected with a few small ravines. Steep bank near lower end. Soil yellow clay, overlaid by gravelly loam. Carry canoes.
12.	1	7	"	Over rock. Carry canoes.
13.	5	10	"	do do
14.	12	15	"	Level trail. Run light canoes.
15.	5	6	"	do Carry canoes.
16.	25	20	"	do Wade, full canoes.
17.	4	6	"	do Wade, light canoes.
18.	1	4	"	Numerous small islands of gneiss in river. Run full canoes down. Wade up.

With the exception of a few rocky ridges and knolls in the upper part of the river, the country through which the Kenogami flows to join the Albany River, is uniformly level. Terraces of banks of brown loam and gravelly earth from ten to forty feet in height are to be seen all along the Kenogami and around Pine Lake, sometimes close to, and at others a short distance from the banks. The soil in the neighborhood of the river is good. The timber is principally spruce, balsam-fir, white cedar, tamarac, white birch and aspen. Some of the larger spruces and tamaracs have been found to measure as much as from four to five feet in girth, at five feet from the ground, but the average diameter of the trees is about eighteen inches. As the last twenty or thirty miles is reached, the ground becomes swampy, the trees diminishing in size, and value in proportion. The distances from Lake Superior to James' Bay by this route would be made up as follows:

Lake Superior to Long Lake.....	22 miles.
Long Lake free navigation, about.....	54½ "

Kenogami River and lakes on its course .....	90 $\frac{3}{4}$ miles.
Pembina Island to junction of Kenogami with Albany.....	99 "
Albany to James' Bay.....	150 "
	<hr/> 416 $\frac{1}{4}$ "

The route from Pembina Island to the junction with the Albany and thence to James' Bay, is without portages, and admits of canoe navigation. It would, however, be more correct to say that the Albany to the point of junction is fitted for navigation by larger craft, a fact that has been well-known ever since the earliest opening of the Hudson Bay Company's trade. It was at this point that Henly House, or Fort, was erected, to protect the trade of the Company against the attempts of the French Canadians to intercept the Indians coming from the west to trade their furs and peltries at Albany, and not a few sharp encounters took place between the rivals, who, in a limited scale, thus maintained a warfare too often raging on a far more extensive one between the representatives of their respective nations nearer home. To the capabilities of the Albany for navigation as described by those who have tested them more recently, older authorities also bear testimony. Before a committee of the British House of Commons, in 1749,\* one John Hayter, a servant of the Hudson Bay Company, gave the following evidence: He said, "that he had been twelve days' journey up the Albany River to a fort or factory called Henly House, which is 150 or 200 miles up that river, that he saw large trees there, but no corn." Being asked the occasion of building Henly House, he said "that the old leading Indian had been used ill by the Governor (at Albany) and brought four French Indians (Indians favorable to the French) from the Southerly to the Westerly River; upon which the Governor erected that fort to prevent the French trade, who never traded there before that season." The Indians referred to had probably taken a route similar to the one we have just been discussing on the authority of Mr. Bell. The witness Hayter goes on to say: "that the climate is much warmer at Henly House than at Albany; but they broke no ground there and consequently he can give no account of the frost; that they carried up nothing but utensils and met with but few falls of waters (rapids) which they towed their boats up. That they were forced to row almost all day long, the stream being too rapid for boats to sail up even in a fresh gale; that it is impossible to tow the boats with horses on account of the badness of the ground, but one man tows a canoe of 24 or 25 feet long and 4 feet wide, which draws about 8 inches of water and will carry a great weight; \* \* \* that the country about Henly House is very high, but warmer than the coast; \* \* \* that he has seen large tracts of land that would, in his opinion, bear corn, (grain) if cultivated, the climate being much warmer within land." Long Lake being at a level of 466 feet above, and Pembina Island 120 feet below, the level of Lake Superior, a difference of only 586 feet in a distance of 140 miles, a road from the outlet of Long Lake to the point on the Kenogami which would be uninterrupted by portages, would hardly be a work involving much labor or cost, if, indeed, it were not economical to construct it to the waters of the Albany itself.

#### LAKE NEPIGON TO ALBANY.

We have, however, one more alternative route for reaching James' Bay *via* Albany, and one that has also been very carefully explored. This would make the north-east shore of Lake Nepigon its starting point.† Lake Nepigon, as will be observed by the map, lies nearly due north of Thunder Bay, communication between the two lakes being maintained by the Nepigon River. The level of Nepigon is, however, some 250 feet above Superior, and, therefore, a lift of that extent would be required to improve the inter-navigation of the two lakes. That once provided, a clear stretch of one hundred miles would be secured and, if the

\*Report Select Committee, House of Commons 1749, p. 221.

†Geological Survey 1871-2, p. 101.



prospects of a large mineral production on the shores of Lake Nepigon be realized, as there seems good reason to believe they will, such a work would probably, in time, be demanded by the exigencies of that and its dependent industries. From Lake Nepigon the Ombabika River is the first stream to be passed on the route to the Albany. The distance to the summit level of the height of land, where Shoal Lake discharges its waters, both north and south, is 25 miles. So easy is the passage of the height of land here that Mr. Bell, in his report, says: "No portage occurs on the Ombabika for about nine miles before reaching Shoal Lake, nor for nearly five miles beyond its northern outlet, so that we passed the height of land with the greatest possible ease, having had about seventeen miles of uninterrupted canoe navigation from the time we made the last portage in going up on the southern side till we came to the first in going down on the northern." Shoal Lake has an elevation of scarcely 300 feet over Lake Nepigon. The distance given, 25 miles, is, by measurement, on direct line. The distance following the course of the stream would be 42 miles. If, however, a road were cut to the point at which the open navigation, mentioned by Mr. Bell—nine miles south of Shoal Lake—commences, it is probable it need not exceed some 18 to 20 miles in length, and several portages on the Ombabika would be avoided, and the rise of 300 feet easily overcome.

The Powitik River, which is the northern discharge of Shoal Lake, after a course of six miles, joins the Ka-pi-ko-ton-gwa, which was descended by Mr. Bell and his party for twenty-one miles, where the Mokoké River was entered and the canoe route north-westward pursued to the Zhob-schquay, and by that stream the Ogoké, a branch of the Albany, was reached, a large river 500 feet in breadth and fifty to sixty feet deep, with lagoons and marshes on either side. These features it is reported to maintain for a long distance both above and below the junction of the Zhob-schquay, although, still lower down, it spreads itself out to a great width and becomes very shallow. But, leaving the Ogoké, the party entered the French Channel, and, at the end of a couple of miles, striking across a height of land that separates the Ogoké from the Kage-i-na-gami, another tributary of the Albany, finally arrived at its junction with the Albany at a lake known as Lake Abazotikitchewan, a distance in a straight line of 83 miles from the mouth of the Ombabika River, or 142 miles, according to the measurement of the distances actually travelled. In the course of the journey there are thirty-three portages, or twenty-nine, if a bend of the Ombabika be avoided by making one portage of sixty-six chains in length, by which means a distance of eight miles of river navigation may also be saved. From Abazotikitchewan Lake to Makekebatan Lake the distance is eight miles, but although there are several rapids there are no portages, the width of the river extending from ten or twelve chains at the rapids to a mile in the intervening spaces. Makekebatan Lake is a fine sheet of water, sixteen miles in length by a mile and a half in width. The Albany leaves the last named lake by two channels, which re-unite at Moosewaké Lake, twenty miles below Makekebatan. The northern channel has, meantime, flowed through a lake called Washi-saigan, or Lake of the Narrows, formerly known as Gloucester Lake, from a Hudson Bay post, so called, that once stood in the vicinity. From Moosewaké Lake to Martin's Falls, in a distance of twenty miles, the River is full of islands and rapids. Martin's Falls, so called, is really only a rapid of some 12 or 15 feet easy descent, and readily passed by canoes. Between Makoketaban Lake and Martin's Falls there are fifteen portages. But, at the Falls, the character of the river changes. The Falls are fully 120 miles above the junction of the Kenogami River with the Albany, which, as already stated, is probably 150 miles from James' Bay. For the whole course of 250 to 270 miles to the sea, the Albany is from twenty to thirty chains in width, from five to twenty feet (averaging about eleven feet) deep, and has a mean velocity of three miles an hour. In the opinion of Mr. Bell, the river would, except in very low water, be navigable by powerful steamers of light draught all the way from its mouth to the Falls. At Martin's Falls is a Hudson Bay post, "where hay, turnips, and potatoes have, for a long time, been successfully cultivated, and cattle thrive well." The river is open, as shown by the journal kept at the post for six months in the year. So free is it

from obstructions below the Falls, that the Hudson Bay boats, in descending, are allowed to drift all night with the stream, the submerged top of a pine tree being sufficient to keep them in the channel.

The total distances traversed by the surveying party are given in the report as follows:—

	Miles.
From Lake Nepigon to the Albany.....	142
Albany to the mouth of the Kenogami River.....	184
Kenogami mouth to James' Bay.....	150
Total miles.....	476

or, from Thunder Bay, one hundred miles more, making the entire distance 576 miles. The question of actual distance, however, is of even less importance than the facilities of this route as compared with others. It must be recollected that, at Thunder Bay, there is already a considerable population, and one of a very enterprising character; that it is the head of the great lake navigation, and also likely to be the resort of a very large tonnage of vessels from the United States as well as from Canada. In view of a trade being opened up either with any section of the region intervening, or with Hudson Bay, the considerations suggested must have great weight. Again, the Hudson Bay Company were, aforetime, accustomed to bring in their goods from Europe *via* Moose for distribution at Fort William and other stations, the payment of customs rates, in the absence of governmental supervision, being thus avoided. And if it should turn out that a trade with Europe can be opened from Hudson Bay to any extent, the busy and growing communities on the shores of Lake Superior and beyond, would naturally expect to benefit by their comparative contiguity to an Atlantic port. We may find, too, in the course of our inquiries, that the mineral region around Nepigon, as well as Superior, will need supplies that a more fertile region to the northward will afford, and for which a route corresponding with some of those already traced out will have to be found. Dividing the course followed by Mr. Bell into open and obstructed or interrupted sections we have the following result:—

From Nepigon by the Ombabika with the portages, to the Shoal Lake and Powitik River, seventeen miles reach, 33 miles, reduced by 68 chains portage at bend to.....	25 miles.
From seventeen mile reach (open).....	17 "
To Albany at Lake Abazotikitchewan (with portages).....	92 "
Lake Abazotikitchewan to Martin's Falls (with portages)...	64 "
Martin's Falls to James' Bay (open).....	270 "
Total.....	468 miles.

With one sweep of 270 miles, the distance in which any interruptions to an unimpeded traffic occur, is thus reduced to less than 200 miles between the great inland lakes and the ocean, and there does not appear to be anything in the nature of the country to make such local improvements as may be needed to facilitate travel or the carriage of freight unreasonably expensive. The explorations of Mr. Bell and his assistants, have been, it is evident, conducted with great intelligence and perseverance. Still they have been, of necessity, more or less hurried, and consequently partial. A very careful examination of the whole country would be needed before pronouncing authoritatively on the advantages of the respective routes, the prospects of settlement, the tokens of latent wealth, or the means of reducing the labor of a journey from point to point to a minimum.

#### LAKE ABBITIBEE ROUTE.

The reports of the Geological Survey do not contain any account of explorations over the River Abitibi to Moose Factory, although that route has, doubtless, been,



in past times, well travelled by voyageurs coming by way of the Ottawa River, from the head waters of which it is separated by only a short distance. Lake Abbittbe lies nearly east and west, a little north of the height of land and on the Ontario and Quebec Boundary line, about one-fourth of its area, according to the Government maps, being in the latter Province. The River Abbittbe may be said to rise in the height of land and to flow through the lake, for the same name is given to its most important feeder from the southward as that of the stream that issues from its western extremity and, after a dip to the south, flows north-west to James' Bay. From Lac des Quinze—an expansion of the Ottawa described by Mr. McOuat of the Geological Survey\* as in most parts about a mile wide and some twenty-three miles in length—with the exception of one short portage at a fall of four or five feet on Lonely River, the navigation for canoes is uninterrupted to within half a mile of the height of land which separates the waters of the Ottawa from the rivers flowing into Hudson Bay, and there is scarcely a perceptible current to overcome. The distance is thirty-one miles. The height of land is but some three-quarters of a mile to a mile in length. That passed, the waters of the Abbittbe are touched at a small lake lying at the foot of the height of land, Lake Abbittbe itself being reached by way of Lake Matawagogig, eight miles, and Lake Agotawekaim, six miles long, connected by a small stream with four short portages in a distance of eleven miles. Here the southern Abbittbe is struck and traversed for nine miles until it joins the lake. Adding together the several stretches of water and portage, the distance to Lake Abbittbe from Lac des Quinze will be about 67 miles, and from the height of land 35 miles. The total length of Lake Abbittbe, or rather of the two lakes into which it is divided, is forty-seven miles. From the south-west corner flows the northern Abbittbe, first south-west, then west to its first fall, a distance of seven miles. From this point in a straight line to its mouth, where it enters James' Bay by the same outlet as the Moose, the length is about 200 miles, making an approximate distance by this route, allowing for the sinuosities of the river, of probably 350 miles from the height of land, or 380 from Lac des Quinze, to James' Bay. Traces of iron are found in the neighborhood of Lake Abbittbe, but not in large quantities, and one curious feature is a magnetic island, situated about the middle of the west side of the lower lake, so powerfully attractive that the surveyors' compasses were useless in its vicinity. On the northern slope of the height of land "groves of white pine were observed in all directions; several pine trees were measured and found to be eight or nine feet in circumference." White spruce, yellow birch and cedar are also tolerably abundant and of good size, some good specimens of the latter being noticed in the hollows among the hills on the south shore of Lake Abbittbe. Around the lake itself pine is scarce, although a few well-grown trees were noticed. "Lake Abbittbe," says Mr. McOuat, "is surrounded on all sides by level clay land; \* \* \* several acres are cultivated at the Hudson Bay Post, and a French Canadian, who has been more than thirty years at Abbittbe, although the only crop now raised there is potatoes, insisted that all the ordinary cereals could be cultivated as successfully at Abbittbe as on the St. Lawrence.

#### FROM LAKE NEPIGON TO LAKE ST. JOSEPH.

In following up the explorations of Mr. Bell, we have incidentally surveyed the larger portion of the tract forming the eastern half of north-western Ontario. The only section remaining is that lying between Lake Nepigon and Lake St. Joseph or the head waters of the Albany. This region, like all the rest of the new territory, is intersected with rivers, lakes and streams. The construction of the Canadian Pacific Railway will do much towards utilizing these means of access to the more remote districts. The information at command leads to the opinion that it is neither a desert nor altogether inhospitable. At Lake Wabigon the Indians cultivate maize, and although in a country so prolific of pine as is Canada other woods are in danger

\* Geological Survey, 1872-3, p. 119 *et seq.*

of being undervalued as an element of national wealth the spruce and tamarac, which seem to become finer and more valuable the further north they extend, are a class of timber that bear a good merchantable reputation, where they can be easily and cheaply conveyed to market. The tamarac for railway purposes finds an enormous consumption, which will increase as the construction of lines either by the Government or as the result of private enterprise is promoted in the North-West, while for ship-building it is an excellent material.

#### PHYSICAL PECULIARITIES AND ASPECT OF EASTERN DIVISION.

Occasional reference has been already made to the physical peculiarities and aspects of the country traversed by the surveyors of the routes to Hudson Bay from Lakes Nepigon, Superior and Huron. A little closer examination of the information at command on this point may be interesting. The termination of the portages and the comparative smoothness with which the rivers falling into James' Bay pursue their course from points at a considerable distance from their ultimate destination is thus accounted for: \* "Between the great lakes and James' Bay, the country is of a very different character in each of the two geological areas which it embraces, namely, the Laurentian and Huronian plateau, and the palæozoic and (probably) tertiary basin of James' Bay. The former is somewhat elevated, undulating, and dotted with great numbers of lakes, while the latter is low, level and swampy, and as far as known, generally free from lakes, constituting a well-marked geographical as well as geological basin, bounded by a distinct vein of hard, ancient rocks for five-sixths of its circumference, since it contracts to a width of only about 200 miles, where it opens into Hudson Bay on a line between Capes Jones (on the east), and Henrietta Maria (on the west). This rim is high, and has a steep slope towards the centre all around. Owing to the unyielding nature of the rocks, all the rivers running into James' Bay meet with a great and generally very rapid descent on reaching the edge of this basin. As a consequence, the "long portages" on all of them occur where they pour down this slope. While the term rocky is very generally applied to the whole of the area lying between the lakes and James' Bay, it is asserted, on very good authority, that the proportion that is "rocky," in the popular signification of the term, is less than is commonly supposed. Mr. Bell, who, from his continuous and very able devotion to the study of the subject, we are again tempted to cite, points out that the fact of the high and rocky points being more conspicuous than the levels, and the further fact that the portages usually occur at rocky places, is very likely to produce a generally exaggerated and erroneous impression.† He goes on to remark: "Loose materials of some kind actually cover the greater proportion of the area, and in a very considerable percentage of it the soil is more or less suited for agriculture. Its precise nature, in various sections, has been described in my reports from 1869 to the present one. As a matter of experience in this sort of country, in the district of Algoma and elsewhere, the quantity of cultivable land, on the establishment of settlements, always proves to be much greater than it appeared while in a state of nature. In a general way there is, perhaps, a greater proportion of good soil in the plateau region northward than southward of the height of land." This will apply, probably, with great fairness, not only to the area referred to as a whole, but to the more limited portions that may be traced along the courses and on either branch of the rivers. The general aspect of the country traversed by the Mattagami, or south branch of the Moose, is undulating, but the inequalities do "not ten exceed one or two hundred feet." Rock crops up here and there, the land otherwise consisting of a sandy and gravelly subsoil, underlaid by bouldery earth or clay, and having more or less vegetable loam upon the surface. From the foot of the Long Portage to the sea, the basin already described is entered. The banks of the river are not often high and usually composed of gravelly and bouldery earth and

\* Geological Survey, 1875-6, p. 338.

† Geological Survey, 1875-6, p. 339.



clay. The banks sustain a second growth of poplar, and white birch, with some coniferous trees, but at a short distance back, the ground is swampy and covered with black spruce and tamaracs growing on a deep layer of sphagnum moss. The islands and mainland about the mouth of the river, consist of alluvial earth well suited for cultivation. Farming and gardening have been very successfully carried on at the Hudson Bay posts at Lakes Mattagami and Missinibi. At Missinibi spring wheat has been grown and turned out well. The climate becomes more moderate as the slope towards James' Bay is descended, the lower level being a compensation for the increasing latitude. The red and white pine are both found in the neighborhoods of Mattagami and Kenogamissie Lakes, and also at Lake Missinibi, but not further north. Indications of mineral deposits present themselves at various points on the route, and large deposits of gypsum occur on the Moose, near James' Bay. A specimen of lignite from the main Moose River gave the following analysis: \*

	Slow coking.	Fast coking.
Fixed Carbon.....	45.82	44.03
Volatile combustible matter.....	39.60	41.39
	Slow coking.	Fast coking.
Water.....	11.74	11.74
Ash.....	2.84	2.84
	100.00	100.00
Ratio of volatile to fixed combustible....	1.16	1.06

The lignite is very similar to some found in the Souris Valley, and also to specimens collected for analysis from the neighborhood of Dirt Hills and Woody Mountain, in the North-West Territory. An analysis of ore from a large deposit on the Moose, at the foot of the Grand Rapid and below the Long Portage, has yielded 52.42 per cent. of metallic iron.†

#### JAMES' BAY.

Having noticed most of the several approaches to James' Bay from the south and west, and supplied at all events material on which some calculations may be made as to its accessibility, we shall direct our attention to the Bay itself and its more immediate neighborhood. James' Bay is a sheet of water 300 miles in length, measured from its most southerly point, to a line drawn from Cape Jones, on its eastern, to Cape Henrietta Maria, on its western coast, where it suddenly expands, and Hudson Bay is entered, of which James' Bay is simply an inlet. James' Bay, except at its southern end, where it becomes irregular and more narrow, is about 150 miles in width, its shores being almost parallel for nearly 250 miles. It received its name from Captain James, one of the North-west passage explorers, who wintered in the Bay at Charlton Island, in the year 1631. It is described as being so shallow that, with the exception of a channel down its centre, the bottom may be touched with an oar by a person rowing in a small boat when almost out of sight of shore. The ship channel runs from a point opposite Moose Factory, in the south of the Bay, the whole distance to Mansfield Island, in Hudson Bay, 750 miles north in nearly a straight line. In traversing this channel a chain of islands, 500 miles long, is passed, many of them of large size, and having rivers that discharge into the larger or smaller Bay. The southern and western shores of the Bay, which represent the portion forming the Ontario boundary, are low and level, and owing to the extreme shallowness of the water at some places, they are difficult of approach from the Bay. "Between high tide water mark and the woods," says Mr. Bell,‡ "there is generally a broad

\* Geological Survey, 1875-6, p. 422.

† Geological Survey, 1875-6, p. 431.

‡ Geological Survey, 1875-6, p. 322.

space or marshy belt interspersed with willow bushes and divided by muddy creeks. In some places this open border is raised above all but the highest spring tides, and constitutes a level prairie, supporting a rich growth of grasses and sedges. The marshy outline of the shore of the Bay is often interrupted by points and peninsula-like islands composed of boulders piled together in thousands, with scarcely any fine material among them." In the southern part of James' Bay the water, although tidal and brackish, is in some parts so free from saline matter as to be used for drinking. This peculiarity is ascribed to the immense volume of fresh water poured into the Bay from the great rivers of which it is the outlet. Its muddiness, caused by the ebb and flow of the tides over so shallow a bottom, is also fatal to the existence of fish which, consequently, have to be sought for in a more northerly situation.

#### MOOSE FACTORY.

Moose Factory, at the mouth of the river of that name, is situated on a small island, six or seven miles from the Bay. The factories of the Hudson Bay Company are not located anywhere with a view to the advantages of settlement, convenience for trade with the Indians and hunters and protection in more troublous times than the present having been the objects most in view in the selection of their sites. The soil at Moose Factory is of cold wet clay, on a level and quite undrained. Nevertheless, oats, barley, beans, peas, turnips, beets, carrots, cabbages, onions, and tomatoes, are grown with no more care for their protection or production than is shown in any other part of Canada. A crop of 1,700 bushels of potatoes was harvested in 1874, and wheat, accidentally sown, had ripened although no experiments as to the ordinary capacity of the soil and climate for its production on a larger scale appear to have been recently made. That this is no barren or famine-stricken land may also be seen from the fact that, at Moose Factory there is quite an establishment of horses, sheep and pigs, in addition to eighty head of cattle. The Right Reverend Dr. Anderson,\* in his evidence before the House of Commons Committee, in 1857, suggested that the means of living were more precarious than formerly at Moose Factory, but his remark probably applied to wild geese or other resources of the Indians, and not to those of settlers depending on the cultivation of the soil or domestic live stock. Mr. George Gladman, who was literally a child of the Hudson Bay Company, for he was born at New Brunswick, one of their posts on the Moose River, and resided at Moose Factory fifteen years, gave a very favorable account of the productions of the district.† He stated that the climate and soil were good; that potatoes and vegetables were raised in great abundance; that barley ripened well; that small fruits such as currants, gooseberries, strawberries and raspberries were plentiful and grew wild; that wheat, owing to the shortness of the season, had never been tried, but that horned cattle, horses, sheep and pigs, were kept there and did well. They required, of course, to be housed in the winter. At Albany, which lies in latitude 52 degrees 8 minutes, north, the climate and soil, Mr. Gladman stated, were similar to those at Moose Fort, although it is considerably further north. It is well sheltered and the marshes on the banks of the river and shores of the Bay yield inexhaustible supplies of hay, a fact that is worthy of notice in connection with settlement in any part of the James' Bay area, as securing an abundant and cheap fodder for cattle.

Sir George Simpson, on the other hand, discouraged the idea that the soil could be successfully or profitably cultivated at Moose Fort.‡ "Barley," he said, "very seldom ripens, the potatoes are exceedingly small, and the crops unproductive." But Sir George Simpson was too clearly convicted, during his examination, of partisan feeling in favor of the Hudson Bay Company, and too antagonistic, to the opening-up of their close preserve, to be accepted as a reliable witness in opposition to the independent testimony of other persons. Nor are we confined to the assertions of those

\*Report Select Committee on Hudson Bay Co. to the House of Commons (Eng.), 1857, p. 241.

†Report Select Committee on Hudson Bay Co. to the House of Commons (Eng.), 1857, p. 391.

‡Report Select Committee on Hudson Bay Co. to House of Commons (Eng.) 1857, p. 46.



whose reports have been already quoted, although no good reason exists for casting doubts upon them. The capacity of the James' Bay region for supporting any population that the temptations of commerce may draw thither, and that is, practically, all we need to know, were perfectly well understood a hundred and fifty years since. In a description of the countries adjoining Hudson Bay, published in 1744,\* is a statement by a Mr. Frost, who had resided at Moose Factory since 1730, and who gave a very good account of the climate and country there, and of the river southward. The purport of Mr. Frost's information was, that on the banks of the Moose wild rice grew in great abundance, the Indians beating it off the plant into their canoes when ripe, and that all sorts of grain could be raised in the vicinity of the river a little to the southward, while, at Moose Factory, barley, peas and beans thrive well, "although exposed to the chilling winds which come from the ice on the Bay." In the woods at the bottom of the Bay, he goes on to say, both at Moose and Albany, as well as at Rupert's River (on the east coast), are large trees of oak, ash, pine, cedar and spruce. "They have," he adds, "exceeding good grass, which improves every day as they cut and feed it, and may have everywhere within land all sorts of pulse and grain, and all sorts of fruit trees as in the same climate in Europe; for what sorts they have tried thrive well." In another book, published in 1752,† it is stated that at Moose Factory "sown wheat has stood the winter frosts and grown very well the summer following, and that black cherries also have grown and borne fruit. Before the Commons' Committee, in 1749, several witnesses gave evidence confirmatory of the above.‡ Mr. Edward Thompson, three years surgeon at Moose Factory, had seen far better barley and oats grow at Moose River than he ever saw in the Orkneys; but the quantity sown was small. The seed would bear sowing again, but diminished in goodness. "There was ground enough broke for this corn (grain), but never any encouragement given for sowing it, but quite the reverse, the Governor forbidding it for no other reason, than that *if corn (grain) had been sown, a colony would soon have been erected there.*" The residents of any settlements on the shores of James' Bay would not, however, be confined to food raised by agricultural labor. The rivers abound in pike, trout, perch and a fish, probably whitefish, from the description. Enormous flocks of wild geese frequent the rivers and bay, and countless flights of wild duck breed in the marshes near the mouths of the Moose and Albany. As many as 20,000 wild geese have been shot in one season, the slaughter only being stayed because no more were needed. In addition to these, there is an abundance of partridges, plovers and other birds familiar to the sportsman.

#### CLIMATE AT MOOSE AND ALBANY.

Mr. Bell, as previously mentioned, gives the neighborhood of the Bay credit for a milder climate than is experienced further inland at a higher level. Mr. Frost, quoted in Hobbs' work, states that at Moose Factory the ice breaks up in April. Mr. Matthew Sergeant, an employé of the Hudson Bay Company, in his evidence before the Committee, in 1749, stated, that the thaw begins at Albany, about the 8th or 10th of April, when there is a good soil for six or eight inches which may be gained within a fortnight after the beginning of the thaw; that in two or three weeks more it thaws to the depth of two feet, commonly by the beginning of May; and the frost sets in again about the beginning of October; but the frosts break sooner up in the country and come in later.§ A journal kept at Albany Factory gives an exact account of the weather and climate at that post in the years 1729-31.|| The frost, it is recorded in this document, began in October in 1729, about which time the geese that had returned from the northward to that river in August,

\* An account of the countries adjoining Hudson Bay, by Arthur Hobbs, Esq., London, 1744, p. 45.

† An account of six years' residence in Hudson's Bay, by Joseph Robson, London, 1752.

‡ Report of the Select Committee on the State of the Hudson Bay Company, 1749, p. 222.

§ Report, 1749, p. 220.

|| Hobbs, p. 12.

departed from thence to the more southern countries. The creek near the Factory was frozen over on the 13th; by the 21st there was a good deal of ice floating in the river; by the 31st it was fast as far as Charles Creek; by the 5th November the whole river was frozen over, but not so strong as to bear; the weather was temperate with some snow on the 27th; all the month of December was interchangeably three or four days cold, and then a temperate frost with some snow; the month of January much the same, cold and temperate interchangeably; the month of February was variable, but mostly moderate, at intervals warm, and then sharp weather; March to the 8th was warm, temperate frost; from that time to the 17th fine clear weather, with some snow; thence to 29th clear weather, tolerably warm; on the 30th a storm of snow; and then it began to thaw in the middle of the day; it continued thawing till the 5th of April, then two days frost; it thawed again till the 13th after the geese returned from the southward; then to the 17th raw, cold weather; 18th warm and rain; then interchangeably warm and raw weather until the 28th, when the frost was broken up in the country by the freshets (freshets) coming down; the 29th the ice gave way to the head of the island, and next day drove down to Baily's Island, when all the marshes were overflowed, the Bay not being yet thawed; the ice continued driving in the river until the 5th of May, then the river fell five feet by the breaking up of the ice at sea; the 7th they had thunder and rain, the ice still driving in the river; the 8th the Indians came down in their canoes to trade; the 13th they had raw, cold weather; 16th they began to dig their gardens; 22nd the tide began to flow regularly; the 23rd they sowed their turnips; the geese then went to the southward to breed; raw, cold weather until the 29th; 30th variable weather with some hail and snow; from that time till the 12th of July fine warm weather; then to the 7th September warm or very hot weather; to the 18th warm and temperate; then to the 25th variable and temperate with some rain; then frost in the night; fine weather until the 29th; October 2nd and 3rd some frost and snow in the night; to the 12th fine weather; stopped fishing, having no frost to freeze the fish; to the 24th fine warm weather with small frost; the 28th ice in the river and the geese going away; November 13th the river full of heavy ice; the 18th it was moderate weather; the winter was not so severe as the former; the geese returned the 14th of April, 1731; the freshets came down May 5th, the 12th the ice was gone to sea; the 13th the Indians came down to trade in their canoes; they had fine warm weather that year from the 11th of May to the middle of September. The Albany was frozen over on the 10th of November. This perfectly reliable narrative certainly does not show the climate of James' Bay to be more severe than in many of the settled portions of Canada. That 1729 was not exceptionally mild is evident from the remark that in 1730 it was not so severe as in the former year. There is nothing in the description here given to show that the inhabitants of the south shore of James' Bay need want for any of the ordinary pleasures or comforts of life, or be more unfavorably circumstanced in regard to the length of the inclement season, than many of their fellow countrymen even in some other portions of the Province of Ontario. The attractions to settlement will be only ascertained after more thorough and systematic explorations than were possible in the brief period of time allotted to the surveyors of the Geological Department, and, although the officers of the Hudson's Bay Company have now thrown off the reserve once enjoined upon them, and show much praiseworthy anxiety to afford information as to the resources of the country, there has never been, under their auspices, any such thorough and exhaustive examination of its hidden treasures as the indications of their existence would justify.

#### MINERAL RESOURCES OF JAMES BAY AND NEIGHBORHOOD.

While at Moose Factory in 1875, Mr. Bell was presented with specimens of massive iron pyrites, dark, smoky chert, like that of Thunder Bay, epidosite, agate, arnelian, quarry crystals, galena, and black crystalline siderite, containing rather a



large amount of manganese, all from the mouth of Little Whale River. Little Whale River is on the east coast of Hudson Bay near the northern extremity of James Bay, and north-east of Moose Factory. It is consequently not within the limits of the Province of Ontario, but its accessibility from Moose River renders its deposits available to any enterprise directed from that point. Mr. Bell, in his report, says: "The conglomerates are said to be largely developed between Cape Jones and Little Whale River. At Moose Factory, I was shown a pile of flagstones which had been brought from an island about seven miles north of Little Whale River. This rock is a very fine-grained semi-crystalline non-calcareous olive-grey felsite. I was given some chips of a somewhat similar, but slightly calcareous rock, holding bunches of small crystals of iron pyrites, which were said to have come from the same vicinity." The specimens of lignite found on the Moose River, or rather at the mouth of Coal Brook, a confluent of the Moose, and analysed by Mr. Hoffman, have been already referred to. Another object of interest, and one demanding careful research, is the appearance of a mineral that closely resembles, if it is not the true, anthracite. Mr. Hoffman's report of his analysis of a specimen of anthracite from Whale River is as follows:†

"It is not improbable that the mineral may have an origin analogous to that of the black anthracite matter which occurs in many places in the Quebec group, as also in the chert beds among the upper copper bearing rocks of Lake Superior, and alluded to in the *Geology of Canada*, 1863, pages 525 and 68. The specimen examined was very compact, homogeneous; color, pitch black; powder, deep black; lustre, bright metallic; fracture, highly conchoidal; it does not soil the fingers. When boiled in a solution of caustic potash, it was apparently unacted on; the solution remained colorless, and the powder black. Gradually heated, or when projected into a bright, red-hot crucible, in either case decrepitated but very slightly." The following is the mean of two very closely concordant analysis:—

Fixed carbon.....	94.91
Volatile combustible matter.....	1.29
Water.....	3.45
Ash .....	0.35
	<hr/> 100.00

Coal, whether anthracite or bituminous, is so potent a factor in all commercial operations, whether as a mechanical agent or as an article of traffic, that the most important results might flow from the discovery of any extensive deposits within a distance not more remote from the commercial centres of Ontario than many of their present sources of supply. Mr. Hoffman‡ also reports that a specimen of iron ore from a large deposit on the north-west side of the south branch of the Moose River, at the foot of Grand Rapid, below the Long Portage, contained 52.42 per cent. of metallic iron. Mr. Bell, speaking of this ore, says: § "The position of the deposit is on the north-west side of the river, at the foot of the rapids. It runs along the cliff for a distance of upwards of 300 yards, with an exposed breadth of twenty to twenty-five yards. The highest points rise about fifteen feet above the level of the river. The surface is mottled, reddish-yellow and brown, and has a rough, spongy, or 'lumpy' appearance, like that of a great mass of bog ore. On the surface, and sometimes to a depth of several inches, it is a compact, brown hematite, occasionally in botryoidal crusts, with a radiating columnar structure; but deeper down it is a dark-grey, compact, very finely crystalline spathic ore, apparently of a pure quality. The brown hematite evidently results from the conversion of the carbonate. The former yields, according to the analysis of Mr.

\* Geological Survey, 1875-76, p. 323.

† Geological Survey, 1875-76, p. 423.

‡ Geological Survey, 1875-6, p. 431.

§ Geological Survey, 1875-6, p. 321.

Hoffman, 52.42 per cent. of metallic iron, while the latter shows a very small amount of insoluble matter; indeed there is, chemically, little room for impurities, since it gives rise to so rich a brown hematite.\*

The gypsum beds on the Moose are thus described: \* "The bank on the south-east side runs for above two miles; that on the opposite side about half that distance. The gypsum consists of a bed of the ordinary hydrous saccharoidal variety running along each side of the river and rising to a height of not more than ten feet above low-water mark. It is mostly of a light-blueish grey color, with some whitish portions colored or mottled with yellow and other colors. The white variety, suitable for making stucco, was not observed to be in sufficient quantity to be of economic value. \* \* \* \* A gypsum bank, similar to the last, runs along the south-east side of the river, between four and five miles below the extremity of the higher one, on the same side."

In a letter which recently appeared in the *Toronto Globe*, Mr. William Hickson, a gentleman of evident intelligence and powers of observation, and formerly in the employ of the Hudson Bay Company, thus refers to the mineral deposits on the shores of James' Bay: "At a certain point on the east coast of James' Bay there is a vein of magnetic iron, so extensive, that, when examined by a practical English miner, in 1865, it was pronounced by that gentleman to be one of the most valuable veins of that ore in existence. Plumbago, in a pure state, is also to be found in the same locality; and at this place is the commencement, on the sea coast, of a range of mineral bearing rocks, which extend along the mainland, and among the islands near the shore, for a distance of 600 miles, with a width of from fifty to two hundred miles or more, into the interior of the country. \* \* \* \* At certain points on this range a partial examination has been made, showing that galena, iron, and copper are procurable in almost unlimited quantities, and during a thirteen years' residence at various parts on this east coast, I had ample opportunities for examining both its geological and mineralogical formations, at a great many points, both in James' and Hudson Bay, and have no hesitation in stating that I believe it to be the most valuable mineral region in the Dominion, perhaps on this continent."

#### THE WILD ANIMALS OF NORTH-WESTERN ONTARIO.

Most of the wild animals of north-western Ontario are to be found in greater or less numbers over both the eastern and western portions. Cariboo range all through the territory, either singly or in small parties of eight or ten. A curious change in the habits of these creatures has been noticed, and one that certainly speaks wonders for their instinct, if the circumstances be as related. It was formerly the habit of the cariboo to migrate during winter in vast herds to the colder regions north of the Nelson River. Thousands of them collected together for their northern march, the crossing of the Nelson being always effected at pretty nearly the same period every year. This fact being well known, they were watched for, and a certain number were killed, their condition in the fall being very favorable for the purposes of the hunter. But in one fatal year (1832), a grand *battue* was arranged; Indians and whites gathered from all parts for one tremendous massacre. The poor cariboo were slaughtered by wholesale, and in sheer sport, the carcasses that could not be consumed or carried off floating in heaps down the water of the Nelson to Hudson Bay. And—strange to tell—the cariboo have, since that terrible day in the annals of cariboo history, never crossed the Nelson again. The moose are becoming very scarce in the region west and north of Lake Superior, although still plentiful, it is said, in the neighborhood of Lake Nipissing. Black bears are very numerous everywhere. In the vicinity of James' Bay and Hudson Bay, there is a bear, dark-brown in color, and in form half-way between the common black and polar bear. This bear is exceedingly fierce and dangerous to attack, while the black bear is seldom known to show ferocity of disposition. The latter may be tamed, but the brown bear of

\* Geological Survey, 1875-6, p. 321.



Hudson Bay is untameable and resists, even when captured young, all attempts at its domestication. Wolves are scarce, as are also their chief prey, the red deer. Red deer once abounded in the region west of Lake Superior, but the destruction of the forests by a great fire about 200 years ago, or near the time of the advent of the first white settlers—and the signs of which are seen in the age of vast forests of trees of about 200 years' growth—drove out or destroyed the red deer, deprived them of their means of support, and, probably, led to the migration of the wolves to places where they too would secure food and shelter. Buffalo were seen by early settlers near Rainy River, but they are not now found nearer than some 300 miles west of Fort Garry. The lynx is frequently met with and so too is the thievish and mischievous wolverine.

The rabbit, or rather hare—for it is of the character of the latter animal the Canadian representative of the genus partakes—is ubiquitous here as elsewhere. The rabbit is the chief food of most of the smaller carnivora, and their numbers largely depend on his fecundity. In times past, too, the Indians found in the rabbit their staff of life. His flesh was their meat; his skin, worked up into every form of robe and garment, was their chief covering. But there came trouble to rabbits and to their human, as well as brute, destroyers. In 1868 a pestilence attacked the rabbits of the whole northern part of the continent. They died in millions; and, in Quebec, local authority had to be invoked to prevent the diseased bodies of rabbits picked up in the woods being sold in the markets. The Indians, who had most depended on rabbits for their supply of food, were terribly distressed, and but for the progress of the Dawson road, and works connected therewith, many would have starved. As it was, some 200 were engaged by Mr. Dawson, and thus temporarily supported. It is to be mentioned to their honor, that they showed the utmost anxiety to send to their suffering families all they could earn and spare from their own necessities. The rabbits are now again multiplying as only rabbits do multiply. There is a sort of tradition that they are cut off, or fail to increase, periodically about once in seven years; but this is probably only a local belief. It is not a small allowance of rabbit, however, that will satisfy the needs of a hungry man, white or Indian. The flesh contains but a small proportion of nourishment, and three or four rabbits per diem are not too many for an ordinary backwoods or pioneer appetite. The common brown, and the more rare and very beautiful silver fox, are among the denizens of north-western Ontario. The black fox, a beautiful creature with silky hair, and whose skin sells for as much as forty pounds sterling, while an ordinary fox skin is not worth more than a dollar, is now and then seen and captured, but, as the price paid for his coat would imply, is regarded as a very extraordinary spoil by the hunter.

Beaver abound on the streams and creeks. It is satisfactory to learn, too, that they are increasing instead of diminishing. In the early days of settlement the Indians and white trappers took pains to preserve the beaver from extinction. But, with the invention of beaver hats and other demands upon the beaver's coat, the price of beaver skins rose, and cupidity got the better of prudence. For some years, however, furs have been low in price, and the use of beaver for hats has all but ceased, so the beaver is recuperating his numerical strength. The otter, fisher and mink are plentiful; while, in the more northern regions the marten attains a high degree of beauty and corresponding value. The musk-rat builds whole cities of his dwellings on the banks of the rivers, and seems to defy the destructive operations of his enemies, for he flourishes and even increases, although, in the Rainy River district alone, no less than 90,000 musk-rat skins have been collected in a single year. The beaver and musk-rat are both "good eating," and figure prominently in the Indian dietary. The ermine, a very beautiful and easily tamed creature, is also a familiar acquaintance of the Indian and settler. The ermine is of a brown color in summer, but in winter becomes perfectly white, with a black tip on its tail, in which condition it is most valuable for marketable purposes. The opossum is a native of the territory, and in the southern part the porcupine is occasionally found; his flesh is a delicacy. The common red squirrel abounds, and there are a great many large squirrels, both

of a brown and grey color. An unpretending but very prolific creature is the deer-mouse, looking, as it poises itself on its hind legs, like a diminutive kangaroo. It is of a hibernating disposition, and, like the squirrel, provides an ample winter store, a colony of deer-mice having been known to carry off half a barrel of peas that had been left unprotected. Of the odorous skunk and every other American representative of the weasel tribe, there are varieties enough to gratify the most passionate student of that branch of natural history. Many of the feathered inhabitants of the territory have been referred to already. The partridge, fantail grouse and water fowl of all kinds, are extremely plentiful. The feathers of the wild goose and the down of the wild swan have long been articles of trade by the Hudson Bay Company.

#### INDIANS OF JAMES' BAY.

The Indians of James' Bay and western shore of Hudson Bay are like those of the Rainy River district, members of the great Algonquin family. A large area of country, lying between Nelson River on the north and Lake Superior, has not yet been the subject of treaty arrangements with its aboriginal possessors. The Indians subsist largely by the chase, and the sale of its produce to the Hudson Bay Company. At Moose River Post, York Factory, and on the English River, the Church Missionary Society has maintained stations, and, according to the testimony of the Right Rev. Dr. Anderson, already mentioned in connection with the Parliamentary Committee in London in 1857, the results have been satisfactory.\* The Bishop, as previously noticed, took an unfavorable view of the agricultural capabilities of the country, and, according to his evidence, some such views must have more or less affected the policy he directed. The difficulty of producing permanently serious impressions on men leading a purely roving life, or inducing them to conform to habits of settled industry, is almost insuperable. But, in addition to the direct benefits, in a religious sense, conferred by missionary efforts, the influence on the relations of the two races exercised by the presence of such an organization as that of the society referred to, can be but advantageous in elevating the tone of a population in its primitive state, and giving the Indians a sense of having in their midst disinterested advisers or protectors. Dr. Anderson's motives for objecting to the abolition of the Hudson Bay Company's monopoly in furs were indicated in a memorial he addressed to the Governor and Committee of the Company, in which he says:† "After four years' residence in Canada, my opinions are unchanged as to the evils that would follow free trade in furs. It would doubtless enable unscrupulous adventurers to make money in the southern part of the territory. Rum would be largely used, and the Indians greatly demoralized, and difficulties thrown in the way of missionary operations. I never hesitate to express my opinion to that effect, whenever I am asked what I think of the movement." The admirable effects of the policy pursued by the Government of Canada towards the Indians of the North-West Territories, and the general result of the system, on which the whole Indian population of the Dominion is provided for, have dispelled many of the fears others besides Dr. Anderson may have once entertained as to an influx of white settlers. But it is easy to see how, looking at the questions before him from such a point of view, he may, unconsciously perhaps, have done an injustice even to the character of the country itself.

#### HUDSON BAY.

Our references have hitherto been mainly to matters directly bearing upon the interests of the Province of Ontario in the territory now brought within its jurisdiction. But, in the waters and country lying beyond the boundary line fixed by the arbitrators, the people of Ontario have, in common with the whole Dominion, also an interest, and from their geographical position, it may be anticipated that they

\* Report of Committee, p. 236.

† Report of Committee, p. 238.



have even a larger stake in the explorations and developments of those regions than others. To them, if communications be established with James' Bay, the whole coast line of Hudson Bay will be accessible, as also will the fisheries in its waters, while, should it be attempted to utilize the Nelson River Valley as a route for the transportation of the products of the Saskatchewan Valley to Europe, settlements would of necessity spring up on the Nelson or Hayes Rivers, and their confluents, and probably on the western shores of the Bay also; if, too, the expectations that the eastern coasts contain large mineral deposits be realized, a demand for the products of Ontario manufactures would naturally present itself in that quarter also. It is true that, as we shall presently see, some eminently respectable authorities are sanguine that the navigation of the Bay and Straits may be effected for a period in the course of the year, sufficient to make it profitable, and to justify very bold measures for connecting the Saskatchewan and Lake Winnipeg, with Hudson Bay by means more expeditious than those now existing. The progress of modern science has done so much to remove old prejudices and to overcome presumed impossibilities that it would be wrong hastily to decide adversely to these views. But certainly the evidence so far before us does not go to prove, by any means that the bulk of cereal products of the west could be forwarded to York Factory in time to admit of their being shipped to Liverpool during the open season. That this might be done on a small scale, and for, perhaps, several successive years, is likely, but it is only by attracting shipping in the ordinary course of commerce, and that, too, in considerable numbers, that a trade, suited to the exigencies of those engaged in it, can be carried on. The advent of an early winter and the consequent detention or dismissal without freights, of a fleet of merchant vessels, would be ruinous in its effects, and in all probability, discourage such ventures for many a year to come. On the other hand, if, in the Hudson Bay region, there are substantial foundations for local enterprise, it may find a safe and uninterrupted outlet by way of the Canadian lakes or St. Lawrence, to either the American or European market; and meantime the possibility of using the mouth of the Nelson River as an ocean port may be experimentally tested for a series of years with the certainty that, if the experiment be successful, commerce will not be long in securing whatever advantages it has to offer.

#### THE NELSON VALLEY ROUTE.

Although the Nelson River has been the highway of traffic and used as the means of communication between Hudson Bay and the interior for well nigh two hundred years, it is to-day as little known to the people of this continent generally or of Great Britain as was, till recently, the great river the travels of Henry M. Stanley have rendered so famous. But, with the growth of a new power in British North America, and the rapid progress of colonization in the North-West, it is all but certain that the Nelson will ere long become as familiar to Canadians, at all events, as is to-day the Red River or the Assiniboine. When it is recollected that, while Lake Winnipeg is 2,500 miles from the seaboard of the Gulf of St. Lawrence, and lies exactly in the centre of the American continent, under the 57th parallel, its northern extremity is only 380 miles from the tide waters of Hudson Bay, the inducements to bring the interests of the North-West into closer relations with this comparatively contiguous ocean port are very great indeed. The Nelson and Hayes Rivers both flow from the westward, and, after a considerable divergence of route, enter Hudson Bay nearly together. It is at the mouth of the Hayes River that York Factory, the chief trading post of the Company on Hudson Bay, is situated in latitude, 57 deg. 10 m. north. It is about 650 miles in a direct line north-west from Moose Factory overland; by sea, 750 miles. Prince of Wales Fort, at the mouth of the Churchill, is 150 miles further to the north-west. The Nelson is the only outlet of the waters of the Lake Winnipeg Basin, including the North and South Saskatchewan. Its fall, in its whole course, of nearly 380 miles, is trifling, not exceeding twenty inches to the mile. While, therefore, the voyager proceeding eastward with his produce has the benefit of a "down grade," his return trip is not so laborious as

in the case of many of the river highways of commerce. The Nelson River proper is less frequented than the Hayes and the chain of rivers with which it is connected. The reason assigned by the Hudson Bay Company for preferring the Hayes for their batteaux is, that there exists danger in "tracking" in the Nelson, from the large blocks of ice hanging from its precipitous banks. The Indians, too, choose the Hayes, because of the accessibility of the factory at its mouth, which, in their light canoes, it would at times be difficult to reach from the Nelson. The following is the route, with distances marked, as furnished by the surveyor of the Hudson Bay Company, and referred to by Professor Hind in his evidence given before the Immigration and Colonization Committee at Ottawa last Session :\*

	Miles.
York Factory.....	0
Hayes River.....	52
Steel River.....	27
Hill River to first fall.....	32
Fall to upper part of river.....	30
Lac de la Savanne .....	7
Jack River (Rivière aux Brochets).....	10
Knee Lake.....	47
Front River.....	13
Holy Lake.....	30
Small brooks and lakes on a great plateau.....	50
Brook with Beaver Dam (Each-away Man's Brook).....	28
Hare Lake.....	7
Sea River (part of the Nelson) .....	35
Play Green Lake (Norway House).....	14
Total Geographical miles.....	382

In the year 1846 a body of troops, under the command of Lieut.-Col. Crofton, were sent by the York Factory and Lake Winnipeg route, to Fort Garry, a distance of 700 miles. The troops consisted of a wing of the 6th Foot, a detachment of Artillery and a detachment of Royal Engineers. The force numbered 383 persons, including 18 officers, 329 men, 17 women and 19 children. With its equipment and four guns, it occupied thirty days in the trip, but the commander reached his destination in twenty-three days from York Factory. The journey was accomplished without accident, or, apparently, any difficulty, except those incidental to portaging. Lieut.-Col. Crofton, in his evidence before the Commons Committee in 1857, produced a list of the portages made by him on the line of route. They are thirty-four in number, as below :—†

NAME OF PORTAGE.	LENGTH IN PACES.	NATURE OF GROUND.
Rock Portage.....	48	Hard, dry, even.
Porrocks.....	39	Rocky, swampy.
White Mud.....	43	Swampy.
Point of Rocks.....	61	Hard, rugged.
Brassa .....	482	Hard and uneven.
Lower Burntwood.....	476	Dry and even.
Morgans .....	266	Rocky, broken.

\* Report of Committee, p. 155.

† Report of Committee, p. 181.



NAME OF PORTAGE.	LENGTH IN PACES.	NATURE OF GROUND.
Upper Burntwood.....	59	Dry, rather uneven.
Rocky Ledge.....	63	Hard, rugged.
Mossy .....	503	Swampy and slippery.
Smoothrock .....	347	Hard, even.
First Portage.....	42	Swampy.
Second Portage.....	58	do
Devil's Portage.....	173	Hard. Difficult landing.
Ground Water Creek.....	51	Swampy.
Lower Creek.....	62	do
Long Water Creek.....	521	do
Second Water Creek.....	68	do
Upper Water Creek.....	53	do
Front Fall.....	49	Rocky, even.
Creek Fall.....	31	Rocky, swampy.
Knife Portage.....	59	Swampy.
Upper Portage.....	40	do
Lower Portage.....	38	do
Moore's .....	56	do
Crooked Spout.....	36	Rocky, swampy.
Upper Spout.....	42	Swampy.
Hill Portage.....	243	Rocky, rugged.
Upper Portage.....	57	do
Whitefall, Robinson's.....	1,760	Level, but slippery.
Painted Stone.....	16	Rocky, even.
First Dam.....	28	Hard, stony.
Second Dam.....	25	do
Sea River.....	63	Rocky, even.

The journey from Norway House to Fort Garry would of course be accomplished without obstruction by way of Lake Winnipeg and the Red River.

#### CLIMATE.

In the valley of the Nelson there is considerable cultivated land, nor is the climate one of extraordinary severity. That the seasons become milder and the winters shorter as the westerly course is taken, is proved by many incidents on record. In Ellis' Voyage\* it is mentioned that the ice in Hayes River, where his ships had wintered, gave way on the 16th of May, and, on the 5th of June, nineteen canoes, laden with furs, passed the vessels on their way to York Factory, a clear proof that the rivers westward had been open at least a fortnight or three weeks previously. Hearne relates that in 1775 †he and his companions killed teal in the rivers they passed through from Cumberland House to York Fort as late as the 20th of October. This shows, not only that the birds in question defer their emigration until the end of October, but that navigation is also open up to or past that date. In his evidence before the Immigration and Colonization Committee, Professor Hind stated as follows: ‡“The warm and moisture-laden winds from the Pacific, moving north-easterly, deposit much of their moisture on the western flanks of the Rocky Mountains. Rising over the summit of the ranges, they are deflected to the south by the

\* Voyage to Hudson Bay, 1746-7.

† Journey to the Northern Ocean.

‡ Report of Committee, 1878, p. 153.

combined influence of the earth's rotation and the pressure of the compensating cold winds from the north. The cold winds acquire their maximum influence on the 95th meridian, which passes through the Lake of the Woods. Further to the eastward, the isothermals are pressed back by the warm winds from the Gulf of Mexico, which push them to the north-eastward. In both cases the rotation of the earth is a leading cause in determining the course of the fertile zones. These, be it observed, are broad generalizations, subject to numerous local modifications, which affect local climates. The Valley of the Nelson appears to exhibit one of these local modifications, arising from its low level above the sea. Until within thirty miles of Port Nelson the canoe route down Hayes River shows little difference in point of climate from the canoe route of Lake Superior where it crosses the height of land. The cause, however, in this case is in part assignable to the difference in elevation above the sea-level, which is upwards of eleven hundred feet; this would theoretically produce a difference in temperature equal to more than three degrees Fahrenheit. All accounts agree in stating that the climate of the valley of the Nelson River changes greatly as soon as a distance of some five and twenty or thirty miles from the sea is reached. The cold winds from Hudson Bay lower the temperature in the vicinity of the sea-board to a great extent, but thirty miles inland their influence is greatly modified."

Joseph La France, in his narrative, \*states that "within four or five leagues of the sea at York Fort the cold continued, and there was ice in the river in June, when above that they had a fine spring, all the trees in bloom, and very warm weather, up to the Great Fork, in the beginning of June." According to Ballantyne† vegetation in the valley of Hayes River, thirty miles from its mouth, on the 23rd of June, was found to be in an advanced state, the trees being covered with foliage, and on the 25th of June he describes the spring to have long begun on Hill River, and "along its gently sloping banks the country was teeming with vegetable and animal life." This is on the canoe route from York Factory to Norway House, and a little to the south of the valley of Nelson River proper. Oxford House is situated on Holy Lake and Lieut. Chappel remarks, ‡that owing to the richness of the soil and the geniality of the climate this place produces a number of excellent vegetables. Dr. King, who was attached to Captain Back's journey to the Arctic Ocean §states that at the commencement of Hill River, half-way between York Factory and Norway House, the argillaceous cliffs are seen rising in some places 100 feet above the water level, capped with hills of at least twice that height; and at some parts of the stream, where it is expanded to a breadth of several miles, innumerable islands appear, stretching in long vistas and well wooded, producing scenery of extreme beauty. The occurrence of such deep deposits of drift clay in this valley is of great importance. The same traveller states that Steel River—the name which Hill River takes after flowing fifty-seven miles—serpentine through a well-wooded valley, presenting at every turn much beautiful scenery, but nothing to equal what is seen along the shores of the former stream. The mouth of Steel River is forty-eight miles from the sea by the winding course of Hayes River into which it falls. Professor Hind, in the course of his evidence, remarked, ||"The brigade of the Hudson Bay Company's boats for the interior, usually leaves York Factory about the end of May, which shows that the rivers are open even in the cold border land within twenty miles of Hudson Bay. We must bear in mind that ice is often found in the lakes near the water-shed, west of Lake Superior, about the middle of May, and Lake Winnipeg is sometimes impassable at its northern extremity during the first week of June. From these comparisons it will be seen that the climate of the Nelson River valley is of an exceptionally favorable character away from the coast line. It can scarcely excite surprise that there should be a large tract with a good climate and great depth of

\* Appendix to House of Commons (Eng.) Committee, 1749.

† Ballantyne's Hudson Bay.

‡ Narrative of a voyage to Hudson Bay, 1817.

§ Narrative of a journey to the shores of the Arctic Ocean, 1833-4-5, by Richard King, M.R.C.S.

|| Report of I. and C. Committee, Appendix to Journals, Canada, 1878, p. 154.



drift clays in the vicinity of the valley of the Nelson River, for it is the lowest portion of the whole basin of Lake Winnipeg, and is constantly under the influence of the drainage waters from three hundred thousand square miles of land, lying altogether to the south of the narrow depression, not, perhaps, more than forty miles broad, through which the Nelson River finds its way. The great thickness of drift clays upon several of the rivers, noticed by different observers, on the canoe route, from York factory to Norway House, must necessarily produce a good soil, and the two conditions of a good soil and a humid climate concur to sustain an exceptionally fine forest growth for this region, and an abundance of animal life." With the information we have at command respecting the Nelson River valley, we may safely come to the conclusion that if not a region to which large numbers of persons are likely to resort exclusively by reason of special attractions for the agriculturist, it is one that would furnish abundant supplies for communities settled on the shores of Hudson Bay, or for any shipping that might resort to its western ports.

#### SOIL AND CLIMATE AT YORK AND CHURCHILL.

With the fact just referred to in view, the precise conditions of soil and climate at York Factory, or the mouth of the Churchill, are of secondary importance. On this point the statements are a little contradictory. Dr. Rae, in his evidence before the Commons Committee in 1857, was asked\* "how the climate at York Factory compared with that of the Orkneys." His answer was to the effect, that the character of the summers was about the same in both cases, but that the winters were longer, extending over seven or eight months, beginning in November and not actually ending before June. Sir George Simpson also spoke † unfavorably of the productiveness of the soil around York, owing to the presence of ice in the ground for most of the year. Mr. A. Isbister, ‡ on the other hand, pointed out that frost in the subsoil does not necessarily prevent the growth of vegetation, if the thaw extends to a reasonable depth. In Siberia, he remarked, which is in the same latitude as the northern part of the Hudson Bay territories, there are large crops of wheat every year. With the process of clearing the country the sun's rays would penetrate deeper and the thaw be more complete. The testimony of Sir John Richardson § and Mr. George Gladman was rather unfavorable than otherwise to the cultivable capacity of the soil at York Factory. Mr. Joseph Robson, six years resident in Hudson Bay, already referred to, while admitting the presence of frost at from three to four feet depth in the ground, alleged that the surface of the ground was free from ice from the latter end of May to the end of August; that he had suffered more from cold in England than at York Factory, the clothing at the latter place being adapted to the climate; and that the soil bore roots such as carrots, radishes and turnips, as well as many other kinds of vegetables. In his opinion, if the land was properly cultivated it would support numbers of people. The want of proper cultivation, including drainage, has, no doubt, a good deal to do with the rather, on the whole, unfavorable picture given of the agricultural or horticultural capabilities of the neighborhood around York Factory.

Robson, who appears to have been a very intelligent person, says: || "The soil about York Fort is much better than at Churchill. Most kinds of garden stuff grow here to perfection, particularly peas and beans. I have seen a small pea growing without any culture; and am of opinion that barley would flourish here. Gooseberries and black currants are found in the woods, growing upon such bushes as in England. Up the river are patches of very good ground; and battonnes under banks so defended from the north-west winds that there is a fine thaw below when the top is freezing; here, whole families might procure a comfortable subsistence, if they were as indus-

\* Report of Hudson Bay Committee, 1857, p. 31.

† Report of Committee of Hudson Bay Company, 1857, p. 46.

‡ Hudson Bay Committee, 1857, p. 136.

§ Hudson Bay Committee, 1857.

|| Six years' residence, p. 43.

trious as they are in their own country. Upon Hayes River, fifteen miles from the fort, is such a bank as I have just mentioned, near which I pitched my tent. After paling in some ground for a coney-warren, and for oxen, sheep, goats, &c., I should expect by no more labor than would be proper for my health, to procure a desirable livelihood; not at all doubting of my being able to raise peas and beans, barley and, probably, other kinds of grain. The island on which York Factory stands is more capable of improvement than can be imagined in such a latitude, and so near the Bay. It is narrow, twenty miles up from the Bay, so that drains might be cut to very useful purpose. I cut a drain near the fort, to dry a piece of ground for a battery of four cannon, which afterwards wore quite a new face; the snow did not lie upon it so long as before, and grain flourished with new vigor. I observed also, that before the snow was thoroughly thawed, several vegetables were springing up beneath it; and by the time it had left only a very thin shell of ice, these vegetables were grown up three or four inches." Some other experiments by Mr. Robson confirmed his opinion that, with draining, a good soil for garden cultivation could be obtained and a considerable quantity of produce raised. As Professor Hind reminded the Committee at Ottawa last Session,\* in all these northern latitudes the duration of light as well as the intensity of the sun's rays must be taken into account as a compensating influence in relation to vegetable growth. He submitted to the Committee the following table giving the relative intensity of the sun and the length of day in latitudes 40°, 50° and 60° respectively, and, therefore, embracing the whole area of territory referred to in this paper.†

TABLE Showing the Sun's Relative Intensity, and the Length of the Day in Latitude 40°, 50° and 60°.

	Latitude 40°.		Latitude 50°.		Latitude 60°.	
	Sun's Intensity.	Length of Day.	Sun's Intensity.	Length of Day.	Sun's Intensity.	Length of Day.
		H.M.		H.M.		H.M.
May 1.....	80	13.46	77	14.30	70	15.44
do 16.....	85	14.16	83	15.16	79	16.56
do 31.....	88	14.38	87	15.50	85	17.56
June 15.....	90	14.50	89	16.08	88	18.28
July 1.....	90	14.46	89	16.04	88	18.18
do 16.....	87	14.34	86	15.42	84	17.42
do 31.....	84	14.08	81	15.04	77	16.38
Aug. 15.....	79	13.36	74	14.18	63	15.24
do 30.....	72	13.02	65	13.28	57	14.08
Sept. 14.....	65	12.22	58	12.32	46	12.46
do 29.....	57	11.44	47	11.36	36	11.26

Commenting on this table the Professor says; "It will be seen that in latitude 40° the sun's intensity is represented by 88 on May 31st, the day being 14 hours 38 minutes long. In latitude 50° the sun's relative intensity of light and heat on the same day is 87, but the day is 15 hours and 50 minutes long. In latitude 60°, which is some degrees north of the Peace River, (and nearly three degrees north of York Factory) the sun's intensity on the 31st May is represented by 85, but the day is 17 hours 56 minutes long. During the fortnight from June 15th to July 1st the sun's intensity closely approximates in latitudes 40°, 50° and 60°; but the day is widely

\* Report of I. & C. Committee, p. 152.

† Report of I. & C. Committee, p. 153.



different in length, and the heat and light have a greater time to act on vegetation under the more northern meridians. Thus, from June 15th to July 1st the sun's intensity diminishes from 90 to 88 between latitude 40° and latitude 60°; the day, however, on July 1st, is, 14 hours 46 minutes long in lat. 40°; 16 hours 4 minutes long in latitude 50°; and 18 hours 18 minutes long in latitude 60°."

The Hudson Bay Post at the mouth of the Churchill River, 59° is subject substantially to the conditions of light, heat and length of day, described in the last column of the foregoing table. It is spoken of by old travellers as being more favorably situated than the other factories for trade, in consequence of its greater distance from the French (in Canada), who interfered greatly with the operations of the incorporated monopolists of the fur trade. The Churchill is described by Hobbs as "a noble river, navigable for 150 leagues, and, after passing the falls navigable to far distant countries." Its sources are near the height of land in long. 110° W., whence by a very devious route it winds its way east and north-east to Hudson Bay, at one point approaching very near to the confluents of the Nelson, and the waters of Lake Winnipeg. The climate at the fort is not by any means intolerable. Captain Middleton wintered there with his ship in 1741. His diary\* shows that snow fell first on the 1st of September, after which the weather was unsettled, the river being frozen over so as to admit of crossing upon the ice on the 9th of October. On the 1st of June the ice gave way in the channel and drove down to sea, but was still fast on the flats. Partridges in large numbers were killed during the whole winter, wolves, foxes and other animals also being seen near the fort. At Churchill, as well as at York and the more southern posts, the wild goose is one of the most regular sources of subsistence, thousands of these birds being killed and preserved for winter food. All kinds of wild fowl abound in these latitudes to quite as great an extent as at Moose or Albany. There is a good supply of wood in the vicinity of Churchill, and, as at other points, any quantity of hay growing in the marshes, and furnishing food for cattle. Seal River lies still further to the northward than Churchill, and, according to Hobbs, the musk-ox is or was, in his time, met with between the two rivers.

#### NAVIGATION OF HUDSON BAY.

In regard to the navigation of Hudson Bay, Mr. Walter Dickson, the correspondent of the *Toronto Globe*, previously mentioned, expresses himself in the following terms:—"This inland sea of Hudson Bay—which might well be termed the Mediterranean of Canada—is upwards of twelve hundred miles in length (including, of course, James' Bay) with a width varying from ninety to three (five) hundred miles and upwards, with several hundreds of islands studded over its surface, some of them of such extent as to have large lakes and rivers on them, giving altogether a sea-board of upwards of two thousand miles (more than that of the United Kingdom of Great Britain), and so easy of access that an ordinary screw steamer might start from Quebec and reach any point on its coast in considerably less than two weeks. That so little information concerning this great inland sea of the Dominion has been given to the world, is simply owing to the fact that, for upwards of two centuries, this sea and the land surrounding were virtually the property of the great monopoly, the Hudson Bay Company, who made it their study, as it was to their interest to keep Hudson Bay, like all the rest of the territory over which they held sway, as completely unknown to the outer world as possible \* \* \* \* The sea of Hudson Bay itself is so little known that there are no charts of it in existence excepting those made by the Hudson Bay Company, and they are only useful as guides to the depots at certain points on the east and west coasts of the Bay."

Professor Hind states† that "the most recent admiralty map of Hudson Straits exhibits a want a full information regarding the coast lines on both sides of the Straits." A chart published in 1853, and corrected up to 1872, retains errors per-

\* Hobbs, p. 14.

† Report I. and C. Committee, 1878, p. 136.

ceivable in those constructed in Queen Elizabeth's reign. The practical tests of the navigation of the Bay have been confined to slow sailing merchant ships sometimes conveyed by men-of-war, not less worthy the appellation of tubs, as compared with the vessels of the present time, sent out on any service supposed to require special qualifications in the direction of speed, strength and security. Yet, it is alleged, that, since their original occupation of the coasts of the Bay two centuries ago only two of the Hudson Bay Company's own ships have been lost, and that through culpable recklessness. It is quite probable, however, that the navigation of Hudson Bay will soon be robbed of some of its terrors, and that what has been regarded as hazardous or impossible will be found, by the aid of the new and powerful agencies modern discovery has provided, both safe and practicable. The contrast in other respects between the experience of twenty years since and that of to-day is rather amusingly exemplified by a perusal of the evidence of Captain Herd, one of the witnesses before the committee of 1857.\* "I do not think," said the worthy captain, "that a steamer would do at all among ice, to force a passage. \* \* \* If I were asked my experience I would prefer a sailing ship among ice to a steamer." He would have been loth to believe that, in a very few years, the whole conditions of the great sealing industry would be changed by the adoption of steamers in place of sailing vessels, and that the hardy seal hunters, so far from avoiding, would actually seek the very ice that he was wont to encounter in his sailing ship, and enter it as fearlessly as he steered his craft in open water. With stout screw steamers, protected as are these used in the Newfoundland seal fisheries, and furnished with the magneto-electric light, there is very little loose ice that need preclude a passage where an end is to be gained by attempting it.

#### HUDSON STRAITS.

Hudson Straits, the only outlet of the Bay, are at its north-eastern extremity. They are about 500 miles in length, and vary in width from 45 miles at the entrance between Resolution Island, on the north, and Britton Islands, on the south shore, to three times that extent in other places. The Strait, like the Bay, contains numerous islands affording excellent shelter and har'orage. The Hudson Bay ships, according to a table compiled by Lieut. Chappell, R.N., in 1814,† had usually arrived abreast of Charles Island, on the south side and near the western entrance of the Strait, at periods varying from the last week in July to the beginning of September. Captain Herd, before the committee in 1857, stated that he usually arrived at York Factory about the 10th or 15th of August, and left again from the 15th to the 25th of September.‡ The time occupied in going through the Straits on the westward trip, in July, and returning in August or September, in sailing vessels, differs greatly, varying from three weeks to a month in the former case, and from three to five days in the latter, the Straits in August or September being free of ice. Professor Hind's theory§ is that Hudson Straits are never frozen over, and that the ice brought down in July is not even from Hudson Bay, but from a more northerly region, whence it reaches Hudson Straits through Fox Channel. The heavy tides in the Straits are strongly against the notion of solid ice being formed there. There is very good authority for believing that the ice formed in Hudson Bay does not leave the Bay at all, but that its dissolution takes place in the Bay itself. In the southern parts of Hudson Bay, and in James' Bay, nearly the whole surface may be frozen over; but the water there is shallow, and, in James' Bay, from causes already stated, contains very little salt. On the contrary, in the upper portions of Hudson Bay, the main body of the water, it is believed, does not freeze at all. Hearne, referring to a fact in ornithology, mentioned by Pennant,|| alludes quite incidentally to the ice being

\* Report Hudson Bay Committee, 1857, p. 256.

† Narrative of a voyage to Hudson Bay, 1817.

‡ Report Hudson Bay Committee, 1857, p. 255.

§ Report of I. and C. Committee, 1878.

|| Journey to the Northern Ocean, p. 429.



frozen "several miles from the shore, the implication being that the ice was limited in its extent to a distance from the shore which the term "several miles" would be popularly supposed to represent. Another fact, too, confirmatory of the belief that Hudson Bay is not the source of the ice-pack that crushes through Hudson Straits, is that, after passing Charles Island, near the western entrance of the Straits, ice is seldom seen, except it is met with floating in the centre of the Bay. The proposition, however, that the passage of the Straits cannot be safely made before the middle of July has been very generally endorsed by navigators of great experience, including Sir Edward Parry. But the view held to-day by Professor Hind and other more recent authorities, namely, that an entrance could be effected and the Bay reached in June, is not a new one.

Robson, in his book already frequently referred to,\* and which was published in 1752, advocated the passage being attempted in June. He says: "At York Fort and Churchill River I have observed that the ice did not break off close at the shore, but gradually; the first field leaving the shore-ice two or three miles broad, the second less, and so on until it was cleared away. These several fields of ice drive through the Straits; but as they go off at intervals, one field may be driven through before the next enters from the Bay; consequently the Strait is sometimes pretty clear of ice. As the Straits, then, *are never frozen over*, nor always unnavigable, even when there is much ice in the Bay, I imagine that a safe passage may often be made about the beginning of June; for, as the ice enters the Straits at intervals, according as it breaks off, and as the wind and currents drive it out of the Bay, so the wind may keep the ice back at this season, as at any other. Besides, the ice at the bottom (southern end) of the Bay, and the north and west ice, will not have had time to reach the Straits, but after June all the Bay ice commonly reaches it. The beginning of June, therefore, seems to be the likeliest time in which to expect a free passage." Robson's idea as to the ice being from the Bay was probably incorrect, but his information as to the ice-movements in the Straits may nevertheless have been perfectly sound. Lieut. Chappell, R.N.,† was also of opinion that the Straits might be entered in June. The danger, if any exists, would be rather in the entrance of the Straits than in their subsequent navigation. The ice at the mouth of the Straits is exposed to all the force of the Atlantic; but, once in the Straits, a vessel, if warned by signals of danger, could easily take refuge in one of the numerous places of shelter on the coast or one of the islands in the Straits. Professor Hind‡ suggests the establishment of signal stations, from which mariners could be advised as to the drift of the ice as affected by the winds, and thus usually secure a more or less open channel. In fact, if the iron-protected screw steamer, thus aided and guided, did not always succeed in overcoming the obstructions arising from this flow-ice in the Straits, the difficulties it presents would be reduced to their smallest proportions. It is understood that Professor Hind's theory has the full endorsement of Professor Bell, whose next issued report of his most recent explorations will be looked for with great interest.

#### HUDSON BAY FISHERIES, MINERALS AND COMMERCE.

Calculations as to permanent trade and intercourse cannot, of course, be based on exceptional experiences. It is, however, a fact attested to by recent visitors to the coasts of Hudson Bay and James' Bay, that for the past two seasons there has been little or no ice in either, while Hudson Straits have also been very clear, and navigation quite unimpeded. To what this state of things may be attributable it is difficult to say, and how long it may continue, is, of course, quite uncertain. But it is interesting as affording one more proof that Hudson Bay is not the ice-bound sea it was once endeavored to make the world believe.

\* Six Years' Residence in Hudson Bay, p. 58.

† Narrative of a voyage to Hudson Bay.

‡ Report of Immigration and Colonization Committee, 1878.

The accessibility or otherwise of Hudson Bay and Straits for several months in the year will have an important influence on the development of its fisheries, which have yet received but little attention. Ungarva Bay, just within the eastern entrance of Hudson Straits, has already an excellent reputation as the field of an extensive seal and whale fishery. In an interesting little *brochure* recently issued by Lieut.-Colonel Dennis, Deputy-Minister of the Interior,\* a table is given from American official sources, showing the returns of American whaling vessels fishing in Hudson Bay from the year 1861 to 1876. The favorite resort of these vessels is Marble Island, in the north-west part of Hudson Bay. Their numbers varied from one to fifteen in a season, the total number in the fifteen years being forty-nine. Another return of the value of the catch for the eleven years—1861 to 1874, omitting 1869 and 1871—was \$1,371,023. Seals and porpoises, among the larger denizens of the ocean, are also to be found in the waters of the Bay or Straits. On the north-western shore of the Bay is a very prolific salmon fishery, capable, apparently, of forming a most important local industry. Although there is no evidence published of cod being captured alive, their remains having been frequently found on the shore, and the resort to the Bay of enormous shoals of caplin—the chief food of the cod—is regarded as one of the best proofs that the cod are not far behind them.

With the fur trade, which still finds, at the mouths of the great rivers that fall into Hudson Bay, its principal depots; with the mineral wealth that will inevitably, at no distant day, be extracted from the coasts of these hitherto almost unexplored waters; from the fisheries that may be stimulated as the facilities for navigation become better understood, and from the fertile soil on the banks of the great western rivers, may accrue results most important to the people of Canada, and in these it is desirable that the Province of Ontario, looking, as it does, to this vast northern sea as one of its boundaries, should as early as possible participate. The question of establishing improved communications between the more populous sections of Ontario and its north-western territory, especially with the settlements on Lake Superior, will undoubtedly ere long engage fuller attention. The practicability of constructing a railway from Sault Ste. Marie from the most advanced point of existing railway communications has long since been demonstrated. The late Mr. Herrick, and other surveyors, have furnished information pointing to the comparative ease by which connections in winter, by means of a stage road, might be maintained with Thunder Bay, the inhabitants of which region are now practically isolated for six months in the year. Lake Superior, on the other hand, never freezes over, nor is it a stormy water, and even Thunder Bay is open till so late a period that, with vessels properly retorted in the bows, it would be possible to maintain traffic, *via* the Sault, for nine months out of the twelve. The Sault certainly appears to be the point to which railway enterprise will have to be directed as providing a way to intercourse with north-western Ontario and the vast territories lying both to the north and west of the boundaries of this Province.

#### 19.—EXTRACTS FROM INSTRUCTIONS TO LORD DORCHESTER, 22nd DECEMBER, 1774.

The following extract from the Royal Instructions bearing date of 22nd December, 1774, will show that the Governors of Quebec had authority over countries beyond the limits of the Province, and that for those outside territories and interior countries they had to provide the means of Government.

PUBLIC RECORD—OFFICE COPY.

*State Papers, Colonial Series Board of Trade, Canada, Entry Book B., Quebec, No. 16.*  
 QUEBEC.

1774. Page 207.—Instructions to Our Trusty and well-beloved Guy Carleton, Dec. 22nd. Esquire, Our Captain General and Governor-in-Chief, in, and over Our

\* Navigation of Hudson Bay, Ottawa, 1878.



Province of Quebec, in America, and of all Our Territories dependent thereupon,  
GIVEN:

*First.*—With these Our Instructions you will receive Our Commission under Our Great Seal of Great Britain, constituting you Our Captain-General and Governor-in-Chief, in America, and in all Our Territories thereunto belonging, as the said Province and Territories are bounded and described in and by the said Commission; you are therefore to take upon you the execution of the Office and Trust We have reposed in you, and the administration of the Government, and to do and execute all things in due manner that shall belong to Your Command, according to the several powers and authorities of Our said Commission, under Our Great Seal of Great Britain and these Our Instructions to you, or according to such further powers and instructions as shall at any time hereafter be granted or appointed under Our Signet and Sign Manual, or by Our Order in Our Privy Council.

\* \* \* \* \*

14. With regard to the nature and number of the Courts of Justice which it may be proper to establish, either for the whole Province at large, or separately, *for its dependencies*, and the times and places for holding the said Courts, no certain rule can be laid down in a case in which the judgment must, in many respects at least, be altogether guided by circumstances of local convenience and consideration.

\* \* \* \* \*

31. \* \* \* But it will be highly proper that the limits of each of those posts and of every other in the interior country should be fixed and ascertained, and that no settlement be allowed beyond those limits, seeing that such settlements must have the consequence to disgust the savages, to excite their enmity, and at length totally to destroy the Peltry Trade, which ought to be cherished and encouraged by every means in your power.

32. It is Our Royal intention that the Peltry Trade of the interior country should be free and open to all Our Subjects, inhabitants of any of Our Colonies, who shall, pursuant to what was directed by Our Royal Proclamation of 1763 (*vide Gazette* of 7th October, 1763) obtain license from the Governors of any of Our said Colonies for that purpose, under penalties to observe such regulations as shall be made by Our Legislature of Quebec for that purpose. These regulations, therefore, when established must be made public throughout all Our American possessions and they must have for their object the giving every possible facility to that trade which the nature of it will admit, and as may consist with fair and just dealing towards the savages with whom it is carried on. The fixing stated times and places for carrying on the trade and adjusting modes of settling tariffs of the prices of goods and furs, and above all the restraining the sale of spirituous liquors to the Indians will be the most probable and effectual means of answering the ends proposed. These and a variety of other regulations, incident to the nature and purpose of the Peltry Trade, in the interior country are fully stated in a plan proposed by Our Commissioners for Trade and Plantations, in 1764, a copy of which is hereunto annexed, and which will serve as a guide in a variety of cases in which it may be necessary to make provision by law for that important branch of the American commerce.

33. The fisheries on the Coast of Labrador and the islands adjacent that are objects of the greatest importance, not only on account of the commodities they produce, but also as nurseries of seamen upon whom the strength and security of Our Kingdom depend.

34. Justice and legality demand that the real and actual property and possessions of the Canadian subjects on that coast should be preserved entirely, and that they should not be molested or hindered in the exercise of any sedentary fisheries they may have established there.

35. Their claims, however, extend to but a small district of the coast, on the greatest part of which district a cod fishery is stated to be impracticable.

36. On all such parts of the coast *where there are no Canadian possessions*, and more especially where a valuable cod fishery may be carried on, it will be your duty

to make the interests of Our British subjects going out to fish there in ships fitted out from Great Britain the first object of your care, and as far as circumstances will admit, to establish on that coast the regulations in favor of British fishing ships which have been so wisely adopted by the Act of Parliament passed in the reign of King William the Third for the encouragement of the Newfoundland fishery, and you are on no account to allow any possession to be taken, or sedentary fisheries to be established on any parts of the coast that are not already private property by any persons whatever, except only such as shall produce annually a certificate of their having fitted out from some port in Great Britain.

37. We have mentioned to you the fisheries upon the Coast of Labrador as the main object of your attention, but the commerce carried on by the savages of that coast and the state and condition of those savages deserve some regard.

The Society of *Unitas Fratrum*, urged by a laudable zeal for promoting christianity, has already under Our protection, and with Our permission, formed establishments in the northern parts of that coast, for the purpose of civilizing the natives and converting them to the Christian Religion; and it is Our express will and pleasure that you do give them every countenance and encouragement in your power, and that you do not allow any establishment to be made but with their consent within the limits of their possessions.

## 20.—EXTRACTS FROM SIR TRAVERS TWISS' WORK ON THE "OREGON QUESTION."

Page 207.—Mr. Greenhow (p. 281), in alluding to the negotiations antecedent to this convention, states that Mr. Munroe, on the part of the United States, proposed to Lord Harrowby the 49th parallel of latitude, upon the grounds that this parallel had been adopted and definitely settled by Commissaries appointed agreeably to the tenth article of the treaty concluded at Utrecht in 1713, as the dividing line between the French possession of western Canada and Louisiana, on the south, and the British territories of Hudson Bay, on the north; and that this treaty, having been specially confirmed in the Treaty of 1763, by which Canada and the part of Louisiana east of the Mississippi and Iberville were ceded to Great Britain, the remainder of Louisiana continued as before, bounded on the north by the 49th parallel. The same fact was alleged by the Commissioners of the United States, in their negotiations with Spain in 1805, respecting the western boundary of Louisiana (British and Foreign State Papers, 1817-18, p. 322).

Page 209.—Mr. Anderson, in his *History of Commerce*, published in 1801, Vol. III. p. 50, observes under the events of the year 1713:—"Although the French King yielded to the Queen of Great Britain, to be possessed by her in full right forever, the Bay and Straits of Hudson, and all parts thereof, and within the same, then possessed by France; yet the leaving the *boundaries between Hudson Bay and the north parts of Canada, belonging to France*, to be determined by Commissaries within a year, was, in effect, the same thing as giving up the point altogether, it being well known to all Europe that France never permits her Commissaries to determine matters referred to such, unless it can be done with great advantage to her. Those boundaries therefore have never yet been settled, although both British and French subjects are by that article expressly debarred from passing over the same, or merely to go to each other by sea or land."

The object of the tenth article of the Treaty of Utrecht was to secure to the Hudson Bay Company the restoration of the forts and other possessions of which they had been deprived at various times by French expeditions from Canada, and of which some had been yielded to France by the seventh article of the Treaty of Ryswick. By this latter treaty Louis XIV. had at last recognized William III. as King of Great Britain and Ireland, and William, in return, had consented that the principle of *uti possidetis* should be the basis of the negotiations between the two Crowns. By the



tenth article, however, of the Treaty of Utrecht, the French King agreed to restore to the Queen (Anne) of Great Britain, "to be possessed in full right forever, the Bay and Straits of Hudson, together with all lands, seas, sea coasts, rivers and places situate in the said Bay and Straits, and which belong thereto, no tracts of land or sea being excepted, which are at present possessed by the subjects of France. The only question therefore for Commissaries to settle, were the limits of the Bay and Straits of Hudson, *coastwards*, on the side of the French Province of Canada, as all the country drained by streams entering into the Bay and Straits of Hudson were by the terms of the treaty recognized to be part of the possessions of Great Britain.

If the coast boundary, therefore, was once understood by the parties, the head waters of the streams that empty themselves into the Bay and Straits of Hudson, indicate the line which at once satisfied the other conditions of the treaty. Such a line, if commenced at the eastern extremity of the Straits of Hudson, would have swept along through the sources of the streams flowing into the Lake Mistassinnie and Abbitibis, the Rainy Lake, in  $48^{\circ} 30'$ , which empties itself by the Rainy River into the Lake of the Woods, the Red Lake and Lake Traverse. This last lake would have been the extreme southern limit, in about  $45^{\circ} 40'$ , whence the line would have wound upward to the north-west, pursuing a serpentine course, and resting with its extremity upon the Rocky Mountains, at the southern most source of the Saskatchewan River in about the 48th parallel of latitude. Such would have been the boundary line between the French possessions and the Hudson Bay district; and so we find that, in the limits of Canada, assigned by the Marquis de Vaudreuil himself, when he surrendered the Province to Sir J. Amherst, the Red Lake is the apex of the Province of Canada, or the point of departure from which, on the one side, the line is drawn to Lake Superior; on the other, "follows a serpentine course southward to the River Oubache, or Wabash, and along it to the junction with the Ohio." This fact was insisted upon by the British Government in their answer to the ultimatum of France, sent in on the 1st of September, 1761; and the map, which was presented on that occasion by Mr. Stanley, the British Minister, embodying those limits, was assented to in the French Memorial of the 9th September. (Historical Memorial of the negotiations of France and England from March 26th to September 20th, 1761, published at Paris, by authority.) By the fourth article, however, of the Treaty of 1763, Canada was ceded in full, with its dependencies, *including the Illinois*; and the future line of demarcation between the territories of their Britannie and Christian Majesties, on the continent of America, was, by the seventh article, irrevocably fixed to be drawn through the middle of the River Mississippi, *from its source* to the River Iberville, and thence along the middle of the latter river and the Lake Maurepas and Pontchartrain to the sea. Thenceforward the French territory in North America was confined to the western bank of the Mississippi, and this was the *Louisiana* which was ceded by France to Spain in 1769, by virtue of the treaty secretly concluded in 1762, but not promulgated till 1765. There would have been no mistake as to the boundaries of Louisiana, Canada and the Hudson Bay territories, as long as they were defined to be the aggregate of the valleys watered by the rivers flowing into the Gulf of Mexico, the Gulf of St. Lawrence and the Bay of Hudson, respectively.

The relative positions of the Lake of the Woods, the Red Lake, and the northernmost source of the Mississippi, were evidently not understood by the parties to the second article of the Treaty of 1783, when it was proposed to continue a line from the north-western point of Lake Superior through the Long Lake, and thence to the Lake of the Woods, and due west to the Mississippi. In order to hit off the sources of the Mississippi, which was the undoubted purport of the treaty, the line should have been drawn from the westernmost point of Lake Superior up the River St. Louis, and thence it might have been carried due westward to the source of the Mississippi, in  $47^{\circ} 38'$ . No definite substitute was proposed in the Treaty of 1794, which admitted the uncertain character of the proposed frontier; for even then the country had not been surveyed, and as neither of the Conventions of 1803 or 1806 was ratified by the United States, nor could the respective plenipotentiaries come to

any agreement on the subject at the negotiation of the Peace of Ghent, the question remained unsettled, until it was at last arranged by the provisions of the 2nd article of the Convention of 1818, that the boundary line agreed upon in 1806 should be the frontier westward as far as the Rocky Mountains.

If this view be correct of the boundary line of the Hudson Bay Territory, as settled by the Treaty of Utrecht, and of the western limit of Canada, as expressed upon its surrender to Great Britain, it will be conclusive against the opinion that the French possessions ever extended indefinitely north-westward along the Continent of North America.

It should be kept in mind that the Treaty of Utrecht was signed in the interval between the grant to Crozat, in 1712 and the charter of Law's Mississippi Company, in 1717. By the former grant, Louisiana had been definitely limited to the headwaters of the Mississippi and the Missouri, and before the subsequent annexation of the Illinois to the Province of Louisiana in 1717, all the territory watered by the streams emptying themselves into the Bay of Hudson had been acknowledged by France to be part of the possessions of the Crown of England.

As, then, the Hudson Bay Territories were implied by that treaty to extend up to the Red Lake and Lake Travers, this would definitely bar the French title further north; but the declaration of the French authorities themselves, on the surrender of Canada, that its boundary rested upon the Red Lake, will still more decisively negative the assertion that Louisiana, after 1717, extended "to the most northern limit of the French possessions in North America, and thereby west of Canada and New France," unless it can be shown that the Illinois country extended to the west of the Red Lake, which was not the fact. This question, however, will be more fully discussed in the next chapter.

Page 223.—The charter given by Charles II. to the Hudson Bay Company, granted to them, *by virtue of the discoveries* made in those parts, all the lands, &c., within the entrance of the straits commonly called Hudson Straits, "which are not now actually possessed by any of our subjects, or by the subjects of any other christian prince or state;" and thus we find in the negotiations antecedent to the Treaty of Utrecht, it was expressly urged in support of the British title to the territories of Hudson Bay, "that Mons. Frontenac, then Governor of Canada, did not complain of any pretended injury done to France by the said Company's settling a trade and building of forts at the bottom of Hudson Bay, nor made pretensions to any right of France to that Bay, till long after that time." (Anderson's History of Commerce, A.D. 1670, Vol. ii., p. 516). In other words, the title which this charter created was good against other subjects of the British Crown, by virtue of the charter itself; but its validity against other nations rested on the principle that the country was discovered by British subjects, and, at the time of their settlement, was not occupied by the subjects of any other Christian Prince or State; and in respect to any special claim on the part of France, the non-interference of the French Governor was successfully urged against that power as conclusive of her acquiescence.

That the Province of Louisiana did not at any time extend further north than the source of the Mississippi, either if we regard the evidence of public instruments in the form of charters and treaties, or of historical facts, is most assuredly beyond the reach of argument. What, however, were the western limits of the Province has not been so authoritatively determined. Mr. Greenhow (p. 283), after examining this question, concludes thus:—"In the absence of more direct light on the subject from history, we are forced to regard the boundaries indicated by nature—namely, the highlands separating the waters of the Mississippi from those flowing into the Pacific or Californian Gulf—as the true western boundaries of the Louisiana ceded by France to Spain in 1762, and retroceded to France in 1800, and transferred to the United States by France in 1803; but then it must also be admitted, for the same as well as for another and stronger reason, that the British possessions farther north were bounded on the coast by the same chain of highlands; for the charter of the Hudson Bay Company, on which the right to those possessions was founded and



maintained, expressly included only the countries traversed by the streams emptying themselves into Hudson Bay."

Charters may certainly be appealed to as evidence against the parties which have granted that, on their own admission, they do not extend their claim beyond the limits of them, and Mr. Greenhow is perfectly justified in confining the limits of Rupert's Land, for such seems to have been the name recognized in the charter, to the plantation in Hudson Bay, and the countries traversed by the streams emptying themselves into the Bay; but the right to those possessions, as against France, was not founded upon the charter, but generally upon recognized principles of international law, and especially upon the Treaty of Utrecht. So, in respect to the northern limit of Louisiana, Crozat's grant, or the grant to Law's Mississippi Company, might be alleged against France, to show that its limits did not extend further north, on the left bank of the Mississippi, than the Illinois. On the other hand, the Treaty of Paris might be appealed to, in order to show against Great Britain, that it did extend on the left bank of the Mississippi as far north as the sources of that river. Again, in respect to the western boundary of Louisiana, Crozat's grant might be cited against France, to show that the Province of Louisiana did not extend further westward than the confines of New Mexico. What, however, was the boundary of New Mexico does not seem to have been determined by any treaty between France and Spain. France seems, indeed, from the words of Crozat's grant, to have considered herself exclusively entitled to the Missouri River on the right bank, and to the Ohio on the left. The claims, however, of Great Britain clashed with her on the banks of the Ohio, as remarked by Mr. Calhoun, in his letter to Mr. Pakenham, of Sept. 3rd, 1844. In an analogous manner the Spanish title conflicted with the French title on the banks of the Missouri; for we find that, in the negotiations antecedent to the Treaty of Washington, in 1819, the Spanish Commissioner maintained that, after Santa Fé, the Capital of New Mexico was built, Spain considered all the territory lying to the east and north of New Mexico, so far as the Mississippi and Missouri, to be her property. (British and Foreign State Papers 1817-18, p. 438.) The United States, indeed, on succeeding to the French title, declined to admit that the Spanish frontier ever extended so far to the north-east as was alleged; on the other hand, the letter of President Jefferson, of August, 1803, shows that they considered their own claims to be limited by "the high lands on the western side of the Mississippi, enclosing all its waters (the Missouri, of course.)"

By the Treaty of Utrecht, the British possessions to the north-west of Canada were acknowledged to extend to the head-waters of the rivers emptying themselves into the Bay of Hudson; by the Treaty of Paris, they were united to the British possessions on the Atlantic by the cession of Canada and all her dependencies; and France contracted her dominions within the right bank of the Mississippi. That France did not retain any territory after this treaty to the north-west of the sources of the Mississippi will be obvious when it is kept in mind that the sources of the Mississippi are in  $47^{\circ} 35'$ , whilst the sources of the Red River, which flows through Lake Winnipeg, and ultimately finds its way by the Nelson River into the Bay of Hudson, are in Lake Traverse, in about  $45^{\circ} 40'$ .

Page 246.—Vattel, v., i. §266, writes: "When a nation takes possession of a country, with a view to settle there, it takes possession of everything included in it, as lands, lakes, rivers, &c." It is universally admitted, that when a nation takes possession of a country, she is considered to appropriate to herself all its natural appendages, such as lakes, rivers, &c., and it is perfectly intelligible why the practice of European nations has sanctioned the exclusive title of the first settlers on any extent of sea-coast to the interior country within the limits of the coast which they have occupied, because their settlements bar the approach to the interior country, and other nations can have no right of way across the settlements of independent nations. In reference, however, to the extent of coast, which a nation may have presumed to have taken possession of by making a settlement in a vacant country, the well known rule of *terre dominium finitur, ubi finitur armorum vis*, might on the first thought suggest

itself; but it has not been hitherto held that there is any analogy between jurisdiction over territory and jurisdiction over adjoining seas; on the contrary, it was ruled in the Circuit Court of New York.

## 21.—CORRESPONDENCE BETWEEN DOMINION MINISTERS AND THE COLONIAL OFFICE, RESPECTING THE SURRENDER OF THE HUDSON BAY COMPANY'S TERRITORIAL CLAIMS, 1869.

SIR GEORGE E. CARTIER AND HON. WM. MCDUGALL TO SIR F. ROGERS.

WESTMINSTER PALACE HOTEL, LONDON, January 16, 1869.

SIR,—We have the honor to acknowledge the receipt of your letter of the 30th ult. (with its enclosures), stating that you were directed by Earl Granville to transmit to us a copy of a letter which his Lordship had received from the Deputy-Chairman of the Hudson Bay Company, relating to some steps which have been taken under the authority of the Canadian Government, and from which the Company apprehend some invasion of their territorial rights.

You inform us that his Lordship will be glad to receive from us any explanation which we may be able to furnish him of the steps taken by the Canadian Government.

We have read the letter of the Deputy-Chairman, and extracts from the letters of Governor McTavish, and have much pleasure in being able to furnish his Lordship with what we hope will prove satisfactory information on the subject of the Hudson Bay Company's complaint.

1. In the month of September last, very precise information reached the Canadian Government that, in consequence of the complete destruction of their crops by locusts, the people of the Red River settlement, numbering probably from 12,000 to 15,000 souls, were in eminent danger of starvation during the winter about to set in.

2. Numerous and earnest appeals for aid had already been made to the Canadian public by writers in the newspapers, and by clergymen and others acquainted with the country. The Right Reverend Robert Machray, Lord Bishop of Rupert's Land, a member of the Council of Assiniboia, and so far a representative of the Company, visited Ottawa, and urged upon members of the Canadian Government the duty of prompt assistance to avert the threatened calamity.

3. No steps had been taken (so far as the Government could learn) by the Hudson Bay Company to provide supplies, and, aware that a few days' delay at that season might render it impossible to get provisions to Red River in time to afford relief, the Canadian Government appropriated the sum of twenty thousand dollars (\$20,000) towards the construction of a road from Lake of the Woods to Fort Garry. The Minister of Public Works (one of the undersigned) was directed to expend the principal part of this sum in the purchase of provisions, which were to be forwarded with all possible despatch to the Red River settlement, and offered to the settlers, not as alms, but in exchange for their labor on a public work in their own vicinity, and of the highest utility to their settlement.

4. A confidential and experienced agent proceeded at once to St. Paul's, Minnesota, and succeeded in forwarding a considerable supply of provisions before the close of navigation. A further quantity had reached Fort Abercrombie, an American post in Dakota Territory, from which point it can be sent to the settlement early in the spring.

5. Information has reached the undersigned since their arrival in England, that the Government Agent had, in accordance with his instructions, conferred with the local authorities on his arrival at Fort Garry; that he had received their approval and promise of assistance; that his timely aid was a cause of much joy and thankfulness in the settlement; and that he had proceeded with a large force of laborers to the limit of the prairie country, some thirty miles from Fort Garry, towards Lake of the Woods, and had there commenced the construction of the road.



6. The immediate object of the Canadian Government in taking the steps complained of, was to supply food to a starving community about to be imprisoned for six months in the heart of a great wilderness, without roads or means of communication with their fellow subjects, and to supply it in the way most acceptable to a high-spirited people, viz., in exchange for their labor. It was thought that even the Hudson Bay Company might look with favor upon a public work which, when completed, will prove a valuable protection to those under their government against similar dangers in the future. On behalf of the Canadian Government, we deny that a "trespass" has been committed, or that our action in this matter was intended to forestall or embarrass negotiations, which the Imperial Parliament has directed to be undertaken for the transfer of the North-Western Territories and Rupert's Land to the Dominion of Canada.

The foregoing explanation may perhaps be deemed sufficient to enable the Earl Granville to answer the complaint of the Hudson Bay Company against the Canadian Government; but the undersigned beg leave to add one or two observations which, in their opinion, this extraordinary demand for the "intervention of Her Majesty's Government," both invites and justifies. If the Hudson Bay Company, who claim the right to hold and govern the territory in which the alleged "trespass" has taken place, had performed the first duty of a government towards its people, by providing them with easy means of communication with the outer world, or if they had shown themselves either able or willing to meet the threatened calamity by a prompt effort to forward sufficient supplies to the settlement before the close of navigation, the Canadian Government would have rested happy in the belief that neither humanity nor public policy required or justified their interference.

The assertion of the Deputy-Governor of the Hudson Bay Company, that the country between Lake of the Woods and Red River is "the freehold territory of the Company," and that the so-called "trespass" of the Canadian Government in sending provisions to the starving settlers, and assisting them to make a road for their own convenience and safety hereafter, is "an actual encroachment on the soil of the Company," might, if unnoticed by us, be claimed as another proof or admission of the rights of the Company in that part of the continent. We, therefore, beg to remind His Lordship that the boundaries of Upper Canada on the north and west were declared, under the authority of the Constitutional Act of 1791, to include "all the territory to the westward and southward" of the "boundary line of Hudson Bay, to the utmost extent of the country commonly called or known by the name of Canada." Whatever doubt may exist as to the "utmost extent" of old, or French Canada, no impartial investigator of the evidence in the case can doubt that it extended to, and included, the country between Lake of the Woods and Red River.

The Government of Canada, therefore, does not admit, but, on the contrary, denies, and has always denied, the pretensions of the Hudson Bay Company to any right of soil beyond that of squatters, in the territory through which the road complained of is being constructed.

We have, &c.,

G. E. CARTIER,  
WM. McDUGALL.

Sir FREDERICK ROGERS, Bart., &c., Colonial Office.

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SIR STAFFORD NORTHCOTE TO SIR FREDERIC ROGERS, BART.

HUDSON BAY HOUSE, LONDON, February 2nd, 1869.

SIR,—I have the honor to acknowledge your letter of the 28th January, addressed to Deputy-Governor of this Company, enclosing a communication from Sir G. Cartier and Mr. McDougall, on the subject of the recent proceedings of the Canadian Govern-

ment in the matter of the construction of a road through the Company's territory between Fort Garry and the Lake of the Woods.

After the distinct statement contained in Sir Curtis Lampson's letter of the 22nd December, that the Company, while protesting against a trespass on their land, were prepared favorably to entertain any application for permission to make such a road, either on the part of the Imperial or of the Canadian Government, the Committee think it unnecessary to discuss the greater portion of the letter of the Canadian Ministers. Their objection is not to the road being made, but to its being undertaken by the Canadian Government as a matter of right, as though the territory through which it is to pass were Canadian. Such a step, taken at a moment when negotiations are in progress for the transfer of the Company's possessions to Canada, and taken by a Government which openly disputes their title to this portion of them, could not have been allowed to pass unchallenged without derogating from the Company's rights. The Canadian Government themselves seem to have been alive to this. Mr. McTavish states that the agent of that Government (Mr. Snow), on arriving at the Red River, communicated to him his instructions from the Commissioner of Public Works in Canada, containing the expression of "a hope on the part of the Commissioner, that the Company's Agent here would offer no opposition to Mr. Snow's operations, but would leave the matter entirely in the hands of the Imperial Government." Governor McTavish, upon this, very properly allowed Mr. Snow to commence his operations; and so far as this Company is concerned, no impediment has been, or will be, offered to the prosecution of the work.

If it were worth while to discuss that part of the letter of the Canadian Ministers which refers to the circumstances under which the construction of the road was ordered, the Committee would be able to show that the Company had in no way failed in their duty to the Colony; but that they had promptly taken measures for the relief of its inhabitants, and had supplied large sums, both by direct grants and by subscriptions raised under their auspices for that purpose, at a period anterior to the appropriation of the Canadian road grant. They would also be able to point out how the delay which has occurred in opening up communications, and otherwise developing the resources of Red River Settlement, is due to the restraint which has been imposed upon them by Her Majesty's Government, at the request of Canada, and not to any negligence or indifference of their own.

But the Committee desire to avoid the raising of a false issue, and they accordingly instruct me to re-state to Earl Granville the precise complaint which they have to make. It is this: that while negotiations are going on for the acquisition of their territory by Canada, the Canadian Government are endeavoring to exercise rights of ownership over a portion of that territory, to the exclusion of the Company, and to the prejudice of their title. This they are doing by virtue of an old claim which they have repeatedly advanced, which the Company have invariably disputed, and have declared themselves ready to contest before a court of law, and which Her Majesty's Government, acting under the advice of various Law Officers of the Crown, have declined to endorse.

The Canadian Government have hitherto shown no inclination to bring their claims to the test of a judicial decision, and in the absence of any such decision, the Committee consider it not unreasonable to ask that due respect should be paid to the Company's uninterrupted possession of the territory for two centuries, and to the numerous and weighty legal opinions which have from time to time been given in their favor.

In appealing to Earl Granville for support in this matter, instead of entering into a controversy with Canada, or taking legal steps to enforce the Company's rights, the Committee have been actuated by a desire to proceed as far as possible in accordance with the views and wishes of Her Majesty's Government, as they have endeavored to do throughout the pending negotiations for the establishment of a settled form of Government at the Red River. They desire now respectfully, but confidently, to claim the support and protection of the Colonial Minister against any



invasion of the Company's rights which may have been prompted or facilitated by the policy which they have adopted in order to meet the wishes of the Colonial Office.

I have, &c.,

STAFFORD H. NORTHCOTE.

Sir FREDERICK ROGERS, Bart.

SIR S. NORTHCOTE TO SIR F. ROGERS.

HUDSON BAY HOUSE, LONDON, 13th January, 1869.

SIR,—I have the honor to acquaint you, for the information of Earl Granville, that I was elected by the shareholders of this Company, on Tuesday, the 5th instant, to the office of Governor, vacant by the resignation of the Earl of Kimberly.

It now becomes my duty to address you in reply to Mr. Adderly's letter, dated the 1st December, 1868, which was received by my predecessor on the eve of his resignation, and to which, in consequence of that event, the Committee have not been able to send an earlier answer.

Before making any observations upon the particular topics discussed in Mr. Adderly's letter, I am desired by the Company to assure Lord Granville that they continue sincerely anxious to promote the object with a view to which this Company was reconstructed five and a half years ago, viz., the gradual settlement of such portions of their territory as admit of colonization; that they adhere to the opinion expressed in their resolution of the 28th August, 1863, viz., that the time has come when it is expedient that the authority, executive and judicial, over the Red River Settlement, and the south-western portion of Rupert's Land, should be vested in officers deriving such authority directly from the Crown; and that they cheerfully accept the decision of Her Majesty's Government, communicated to them in Mr. Adderly's letter of the 23rd April, 1868, viz., that the whole of the Company's territory should, under proper conditions, be united with the Dominion of Canada, and placed under the authority of the Canadian Parliament.

Acting in accordance with the wish of Her Majesty's Government as conveyed to them in Mr. Elliott's letter of the 23rd January, 1867, the Committee have declined to encourage overtures which have been made to them by private persons for the purchase of portions of the Company's territory with a view to their colonization, and have kept the whole question in abeyance during the time that the negotiations which have led to the confederation of the British Provinces constituting the Dominion of Canada, were proceeding. In the whole of that time they have taken no step which could give rise to fresh complications, or could place any new difficulty in the way of the admission of their territory into the confederation when the proper moment should arrive; and when they were informed by Mr. Adderly's letter of the 23rd of April, that the Parliament of Canada had addressed Her Majesty upon this subject, we were requested to state the terms which the Company would be prepared to accept, proceeding on the principle adopted in the interrupted negotiations of 1864, they unhesitatingly complied with the desire of the Government.

It is therefore with surprise, as well as with regret, that they have learnt from the letter now under reply that the terms proposed by them, even when most strictly in conformity with the principles adopted in 1864, are considered by Her Majesty's Government to be inadmissible, and not to afford much prospect of an arrangement being come to. They find, for instance, that the stipulation that the Company should receive one shilling per acre on lands hereafter sold, which was originally suggested to the Committee by His Grace the late Duke of Newcastle, in Mr. Fortescue's letter of March 11th, 1864, and which has never hitherto been called in question, is the first point to which exception is now taken. Objections are also raised against several other proposals which have been long before the Government, while no notice at all is taken of some which have been made for the first time with a view to the protection of the Company's trade, and with regard to which the Committee are left in ignorance whether they are considered admissible or not.

The Committee, although somewhat embarrassed by this apparent change in the spirit of the correspondence, desire me, however, to make the following observations upon some of the remarks contained in Mr. Adderley's letter, in order that there may be no misapprehension as to the bearing of their proposals:

The Committee are aware that, as stated in Mr. Adderley's letter, in order to prepare the country for settlement, very considerable annual outlay will have to be incurred, and that for this charge the produce of the early sales of lands is the natural resource, but they are at a loss to understand upon what grounds it is alleged that their proposals would deprive the future Government of the ceded territory of "any prospect," for a long time at least, of "receiving any income."

The only part of the territory in which it is probable that an early or extensive settlement will take place, is the part known as the Fertile Belt. It has been confidently asserted by independent persons who have travelled through the country, that a great part of the land is not inferior in quality, or in advantages of climate, to the adjoining United States Territory now forming the State of Minnesota, and it has been justly pointed out that, being prairie land, it does not require much labor to render it fit for cultivation. But the price of land in Minnesota ranges, as the Committee are informed, from five shillings to one pound per acre. The Committee think, therefore, that the fixed payment of one shilling per acre, proposed by the Duke of Newcastle, and accepted by them as a basis of compensation, cannot be deemed to be unreasonable so far as related to land sold within the limits set forth in Sir Edmund Head's letter of the 11th November, 1863.

As regards any portions of land lying outside these limits, which may possibly be sold, the Committee think it very improbable that such sale will take place except for mining purposes, in which case the payment of a shilling per acre could hardly be deemed excessive. In order to save trouble and obviate disputes, therefore, the Committee proposed the fixed payment of one shilling per acre in respect of all sales wherever they may take place, and they believe that the arrangement would have been, on the whole, more favorable to Canada than that suggested by Mr. Adderley.

Mr. Adderley proceeds to remark with reference to Lord Kimberley's proposal, that the Company should retain certain reserves around their posts; that the reservations would amount to upwards of 500,000 acres. It was, however, stated by Lord Kimberley and the Deputy-Governor, at an interview with the Duke of Buckingham upon this subject, that the Committee were willing to confine their claim for reserves to the limits defined by Sir Edmund Head's letter of the 11th November, 1863; that they were prepared to agree that such reservations should be measured by the importance of the posts to which they were to be attached, and should in no case exceed 3,000 acres. The total quantity of land to be retained by the Company under this arrangement would not exceed 50,000 acres. The Committee cannot agree to the absolute exclusion of these reserves from all frontage to "rivers or tracks, roads or portages," which would render them entirely valueless, although they would have been ready to consider any reasonable limitation of these special advantages.

As regards the right of selecting lands from the Company in proportion to the quantities sold from time to time by the Government, the Committee desire to call Lord Granville's attention to the reasons given in Sir E. Head's letter of the 13th April, 1864, for adopting this mode of reservation in preference to that of "setting apart beforehand a number of isolated tracts of wild land, dotted over the surface of the colony, and calculated to impede the free flow of settlement in the territory." Their proposal was framed with reference to sales in the Fertile Belt only, and it never entered into their minds to contemplate such contingencies as those suggested by Mr. Adderley's letter. In order, however, to obviate all cavil upon this point, they would have been quite willing to limit the Company's right of selection to the case of lands sold or alienated within Sir E. Head's limits, provided that it were agreed that no alienations should take place beyond those limits, except either for distinctly public purposes, or for the *bonâ fide* carrying on of agricultural or mining operations. As regards Mr. Adderley's proposal that the right of selection should be confined to five



lots of 200 acres each, in each township as it is set set out, the Committee can only remark that the character of this proposal must depend upon the size of the township, of which no indication has been given.

The Committee still adhere to the opinion that, under the peculiar circumstances of the proposed transfer of their territory, it would be reasonable that their wild lands should, for a limited time, be exempt from taxation, in order to allow them a fair opportunity of bringing them into profitable cultivation.

They observe that Mr. Adderley makes no reference to the tenth stipulation contained in Lord Kimberley's letter of the 13th May, viz., that until the stipulated sum of £1,000,000 sterling has been paid to the Company, no export duties shall be levied by Canada upon furs exported by the Company, nor any import duties on articles imported by them, into the North-Western Territory, and into that part of Rupert's Land which is not included within the geographical limits laid down in Sir Edmund Head's letter of November 11th, 1863. This is a point to which the Committee attached very great importance. If it had been proposed by the Canadian Government to make a direct purchase of the Company's territory, and to pay the price for it at once, the Company would, of course, have accepted their fair share of the burdens which annexation might be expected to involve. But if the purchase money is to be withheld until the Canadian Government have sold off 20,000,000 acres of the land, or have realized a considerable sum by the produce of mining operations, it is reasonable that the pressure of the fiscal burdens, which would fall almost exclusively upon the Company's trade, should be suspended also. Otherwise it might happen that, in consequence of the neglect or inability of the Canadian Government to proceed with the settlement of the territory, the Company would be subjected to very heavy contributions to the colonial treasury without receiving the smallest benefit in return. As an illustration of the extent to which they might thus be injured, were no limitation placed upon the colonial power of taxation, I may observe that, according to the present Canadian tariff, the duty upon the value of the Company's imports alone would amount to about £20,000 a year, while any export duty that might be laid upon their furs would operate still further to their disadvantage. The Committee feel confident that Lord Granville will acknowledge the reasonableness of their taking precautions against such a contingency.

The Committee have desired me to offer to Lord Granville these explanations of their proposals, in order to show that they have done their best to comply with the desire of Her Majesty's Government, that they should submit a scheme founded on the principles of the negotiations of 1864. They have not, however, failed to perceive from an early period of the lengthened correspondence which has taken place between them and the Government, that those principles necessarily gave rise to many difficulties; and they have felt this the more strongly since the negotiations originally commenced between the Company and Her Majesty's Government have virtually become negotiations between the Company and the Government of Canada. They cannot disguise from themselves the danger which exists that arrangements so complicated, and involving so many topics for future discussion, are likely to lead to the Company's being placed in a position of antagonism to the Government of Canada, and to the creation of a state of things injurious not only to their own interests but to the welfare of the country itself. They are sincerely anxious to co-operate with the Canadian Government in the settlement, development and improvement of the territories with which they have been so long connected, and they believe that, if the arrangement between them can be placed on a satisfactory footing, it will be in their power to render material assistance to the colonial authorities in this respect. They believe that, if a simpler arrangement than that which has recently been under discussion could be adopted, and if the Canadian Government were prepared to complete the purchase of the territory at once, by the payment of a sum of money or by the delivery of bonds, it would conduce to a more satisfactory result than the prolongation of a controversy as to the minute points of such a scheme as has been under consideration.

Should Lord Granville be of this opinion, and should his Lordship think it desirable to recommend any proposal of the kind to the Canadian delegates, this Committee will gladly place themselves in full communication with him on this subject.

I have, &c.,

STAFFORD H. NORTHCOTE, *Governor*.

Sir FREDERIC ROGERS, Bart.

SIR F. ROGERS TO SIR G. CARTIER AND HON. WM. MCDUGALL.

DOWNING STREET, 18th January 1869.

GENTLEMEN,—I am directed by Earl Granville to transmit to you, for any observations which you may wish to offer upon it, the enclosed copy of a letter from the Hudson Bay Company in answer to the proposals made to them by the Duke of Buckingham and Chandos in the letter from this Department of the 1st of December last, with respect to the proposed cession to the Crown of the Company's territorial rights in British North America.

I am, Gentlemen, your obedient servant,  
FREDERICK ROGERS.

Sir G. E. CARTIER, Bart.,  
W. MCDUGALL, Esq., C.B.

SIR GEO. E. CARTIER AND HON. WM. M'DUGALL TO SIR F. ROGERS.

WESTMINSTER PALACE HOTEL, LONDON, February 8th, 1869.

SIR,—we have the honor to acknowledge the receipt of your letter of the 18th ultimo, enclosing a copy of Sir Stafford Northcote's letter of the 13th ultimo, in reply to proposals made to the Hudson Bay Company for the cession to the Crown of their territorial rights in British America, by His Grace the Duke of Buckingham and Chandos, in the letter of Mr. Adderley, of 1st December last.

You state that Earl Granville directed you to transmit this document to us for any observations which we may wish to offer upon it. His Lordship's courtesy and consideration in sending us a copy of Sir Stafford Northcote's letter and inviting us to express our views upon it are gratefully acknowledged, but upon reflection we thought it would be expedient to refrain from any formal expression of our opinion on new and indefinite propositions until we had received some intimation of the view which his Lordship was likely himself to take of them, or of the policy in respect to the general question which Her Majesty's present advisers intend to adopt.

At an interview with which we were favored by Earl Granville, on the 26th ultimo, he expressed his preference for a less complicated mode of dealing with the Hudson Bay question than that proposed by the Duke of Buckingham and Chandos; and requested us to communicate to him our observations on the reply of Sir Stafford Northcote, and especially on the proposition with which his letter concludes, viz., that the Canadian Government should "complete the purchase of the territory at once, by a payment of a sum of money or by the delivery of bonds."

As we have had but few opportunities to confer with his Lordship since his accession to office, it may be proper, before considering Sir Stafford Northcote's letter, to state the position of the Canadian Government as we apprehend it, in this negotiation.

The British North America Act of 1867 affirmed the policy uniting under one government all the provinces, colonies and territories of British North America. Three provinces were united at once, and provision was made by the 146th section for the admission into the Union of the remaining colonies, on Address to Her Majesty by their respective Legislatures and the Parliament of Canada.



The North-West Territories and Rupert's Land, or either of them, are to be admitted on the Address of the Parliament of Canada alone, and on such terms and conditions as the Canadian Parliament may, in its Address express, and Her Majesty approve.

In pursuance of the policy of the Imperial Parliament, thus distinctly affirmed, the Canadian Parliament at its first session under the new constitution, adopted an Address to Her Majesty for the incorporation of the North-West Territory and Rupert's Land with the Dominion of Canada. The terms and conditions expressed in the Address were:—

1st. That Canada should undertake the duties and obligations of Government and legislation in respect of those territories.

2nd. That the legal rights of any corporation, company or individual within the territory should be respected, and that provisions should be made for that purpose by placing those rights under the protection of courts of competent jurisdiction.

3rd. That the claims of the Indian tribes to compensation for lands required for purposes of settlement should be considered and settled, in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines.

The above were the only terms and conditions which, in the opinion of the Canadian Parliament, it was expedient to insert in the Order in Council authorized by the 146th section.

His Grace the Duke of Buckingham and Chandos, on receiving the Address of the Canadian Parliament, consulted the Law Officers of the Crown, who advised, amongst other things, "that there would be much difficulty created by the existence of the Charter" of the Hudson Bay Company, to "putting into execution the powers of the 140th (146th) section of the British America Act, 1867, assuming that the Hudson Bay Company were adverse to the Union."

A bill was thereupon carried through the Imperial Parliament, apparently to remove the "difficulties" which the law officers had discovered. It reverses the order of procedure contemplated by the Act of 1867, and observed by the Canadian Parliament in its Address, and makes the assent of the Company a condition precedent to the transfer.

The Canadian Government were not consulted as to the terms of this Act; they could not understand why it was necessary, and greatly doubted the expediency of passing it.

The Duke of Buckingham and Chandos, having opened negotiations with the Hudson Bay Company under the authority of the Act last mentioned, invited a delegation from the Canadian Government to confer with him in this country. The undersigned, duly commissioned for that purpose, repaired to London in October last, and had frequent interviews with His Grace before his retirement from office.

The proposals submitted to the Company by the late Government in the letter of Mr. Adderley of the 1st December last, were not made at our suggestion, although we were disposed to think (and so informed His Grace) that if the Company accepted them, the Canadian Parliament might be persuaded to undertake the duties of legislation and Government in the territories on the conditions specified.

The Company, through Sir Stafford Northcote, have declined to accept either the principle or the mode of settlement proposed by the late Government, but suggest a new and summary method of closing the negotiations, by demanding that the Canadian Government should, by a payment in cash or bonds, "complete the purchase of the territory at once." No sum is mentioned, and no data given from which it can be inferred. Under these circumstances, we are asked, as representatives of the Canadian Government, to communicate to Earl Granville any observations we may wish to offer on this reply and proposition of the Company.

His Lordship will readily perceive from the foregoing recital, that as representatives of the Canadian Government, we are in the position of spectators of a negotiation, begun and carried on upon principles and under conditions to which we

are strangers, rather than that of assenting principals, responsible for its initiation and bound by its results.

Without undertaking, therefore, that our views on every point will be approved by the Canadian Government, we proceed most respectfully to offer a few observations on Sir Stafford Northcote's reply to the recent proposals of the Imperial Government.

It will be observed that two things are assumed in these proposals to the Company, which the Canadian Government have always disputed :

1st. That the Charter of Charles II. is still valid, and grants the right of soil, or freehold, of Rupert's Land to the Company.

2nd. That Rupert's Land includes the so-called "Fertile Belt," extending from the Lake of the Woods to the Rocky Mountains.

The Law Officers of the Crown in England have, on two or three occasions, given their opinion in favor of the first assumption, but never, so far as we are aware, in favor of the second. The report of the Law Officers, in 1857, admits that the geographical extent of the territory granted must be determined by excluding the country that "could have been rightfully claimed by the French as falling within the boundaries of Canada," (which the Charter itself excludes by express words), and states that "the assertion of ownership on important occasions, as at the treaties of Ryswick and Utrecht," should be considered; and also "the effect of the Acts of 1774 and 1791." The most recent opinion of the law officers of the Crown which we have seen (January 6th, 1868), as to the rights of the Hudson Bay Company, does not even by implication support their present claim to the fee simple of nearly one-third of the American Continent. On the contrary, Sir John Karslake and his colleagues conclude their report with the emphatic statement that it is "very necessary, before any union of Rupert's Land with Canada is effected, that the true limits of the territory and possessions held under the charter should be accurately defined." An assumption, therefore, which covers so much ground, and is unsupported by any competent legal authority; which ignores the repeated protests and claims of Canada, and seeks to supply a basis upon which a surrender for valuable consideration may be made, is, to say the least, a most favorable assumption for the Company. We notice these points in Mr. Adderley's letter before remarking on Sir Stafford Northcote's reply, to prevent the possible inference that we have acquiesced in them.

Sir Stafford Northcote assures Lord Granville that the Company "continues sincerely anxious to promote the object with a view to which the Company was re-constructed five and a-half years ago, viz., the gradual settlement of such portions of their territory as admit of colonization." It would be tedious to quote the numerous and positive averments by members and governors of the Hudson Bay Company, in the course of official inquiries, during the last fifty years, that their territories (in which they included the Red River and the Saskatchewan districts) are totally unfit for colonization. The evidence of Sir George Simpson before the House of Commons Committee of 1857 is a fair sample of the views heretofore entertained and avowed by the representatives of the Company. (*Vide* Commons Report, 1857; Questions 716, 717, 718, 719, &c.) Mr. Ellice, for many years the ruling spirit of the Company, declared before the same Committee that the Red River settlement was an "unwise speculation," and "had failed;" that "the climate is not favorable;" that the Saskatchewan is a country capable of settlement only when "the population of America becomes so dense that they are forced into situations less fit for settlement than those they occupy now;" that the winters are "rigorous," and the country "badly off for fuel," &c. (Questions 5,840 and 5,847.)

With such views of the unfitness of the country for settlement, and avowing their belief that colonization and the fur trade could not exist together, it is not surprising that the Company have always cherished the latter, which was profitable, and discouraged, and, as far as possible, prevented the former, which had proved an "unwise speculation." It is true that the Company was "re-constructed" in 1853, with loud promises of a new policy. A great road across the continent was to be made, a telegraph line was to be put up, and emigration and colonization developed on a large



scale. The Duke of Newcastle, then Secretary of State for the Colonies, was so much impressed by the zeal and public spirit of the gentlemen who effected the re-construction, that he wrote despatches to the Canadian Government on their behalf, and evidently believed that a new era was about to open in the North-West, and the wild animals and fur traders retreat before the march of "European" settlers. The stock of the old Company, worth in the market about £1,000,000, was bought up, and by some process which we are unable to describe, became £2,000,000. A show of anxiety to open postal and telegraphic communication was made, and "heads of proposals" were submitted to the Governments of Canada and British Columbia, which, on examination, were found to embrace a line of telegraph only, with the modest suggestion that the two Governments should guarantee the Company a profit of not less than 4 per cent. on their expenditure! A proposal so absurd could only have been made to be rejected, and it was rejected accordingly. The surplus capital of the re-constructed Company, which was called up for the avowed purpose of opening their territories to "European colonization, under a liberal and systematic scheme of land settlement," has never been applied to that purpose. Five and a-half years have passed since the grand scheme was announced to the world, but no European emigrants have been sent out, no attempts to colonize have been made. Sir Stafford Northcote was not probably aware, when he vouched for the *bona fides* of the Hudson Bay Company as promoters of colonization, that a solemn vote of the shareholders was taken in the month of November, 1866, which condemned and rejected the policy of colonization, absolutely and definitely.

While unable, for the reasons stated, to concur in Sir Stafford Northcote's assurance that the Hudson Bay Company are anxious to promote colonization, we are gratified to learn that they "adhere" to the resolution of 28th August, 1863; that the time has come when it is expedient that "the authority, executive and judicial, over the Red River Settlement and the south-western portion of Rupert's Land, should be vested in officers deriving such authority directly from the Crown."

The first remark we have to make upon this reference to the resolution of 1863 is, that it admits the continued incapacity of the Company as a *governing* power; the second, that if this was true in 1863—if at that time it became expedient to substitute the authority of the Crown for that of the Company,—it is much more expedient, if not absolutely necessary, now; and third, that if the Company are to be relieved of the duty and cost of government which their charter imposes, and which they admit they do not and cannot properly discharge, compensation should be made, not to the Company, as is claimed, but *by* the Company to those who take the burden off their shoulders.

We confess we have failed to discover any evidence, and therefore cannot believe that the Company have "cheerfully" accepted the decision of Her Majesty's Government, "that the whole of the Company's territory should, under proper conditions, be united with Canada." A brief notice of the *acts* in contrast with the *professions* of the Company will, we think, account for the ill success of our researches, and justify our incredulity.

The representatives of the Company, while declaring before the House of Commons Committee, in 1857 (as we have already shown), that their territories were "unfit for settlement," professed their readiness to surrender any portion of them that might be desired by the Imperial or Canadian Government for that purpose.

Mr. Ellice declared in the most unqualified terms, not only that the Company was willing to surrender, but it was the duty of the Government to see that no mere trading corporation obstructed "for one moment," nor to the extent of "one acre of land fit for settlement," the "dominion of the actual settlers." (Commons Report, 1857; questions 5,859, 5,860 and 5,933.)

The Governor of the Company informed the Colonial Secretary, (18th July, 1857,) that any inquiry into the "geographical extent of the territory granted by their Charter," which the law officers had recommended, was of little importance, because, if the object of the inquiry was "to obtain for Canada land fit for cultivation, and the establishment of agricultural settlers, the Directors are already pre-

pared to recommend to the shareholders of the Company to cede any lands which may be required for that purpose. The terms of such cession," he assured Mr. Labouchere, "would be a matter of no difficulty between Her Majesty's Government and the Company."

Mr. Ellice had previously told the House of Commons Committee, that the question of boundary was "of no importance at all," because "if the Province of Canada requires any part of the territory, or the whole of it, for purposes of settlement, it ought not to be permitted for one moment to remain in the hands of the Hudson Bay Company." He added that, "less money than would be spent on a litigation upon the subject would be sufficient to indemnify the Hudson Bay Company for any claim which they could have on giving up any disputed part of their territory."

These assurances induced the Committee to negative propositions for ascertaining by a judicial inquiry the validity of the Charter, or the position of boundaries, and to report in favor of annexing to Canada "such portion of the land in her neighborhood as may be available to her for the purposes of settlement, with which she is willing to open and maintain communication, and for which she will provide the means of local administration." The Committee "trusted that there would be no difficulty in effecting arrangements as between Her Majesty's Government and the Hudson Bay Company for ceding the territory on equitable principles."

It may be proper to remind Earl Granville, that leading members of the Committee of 1857, taking the offers of the Company on the subject of colonization to mean what the language of the representatives imported, strongly opposed the recommendation to leave the question open for "amicable adjustment" upon "equitable principles," with the certainty of protracted negotiations and a chance of ultimate disagreement. Mr. Gladstone accordingly submitted resolutions for a prompt and definite settlement of the whole question. He proposed—

1st. "That the country capable of colonization should be withdrawn from the jurisdiction of the Hudson Bay Company."

2nd. "That the country incapable of colonization should remain within their jurisdiction."

He proposed that, in the country remaining within their jurisdiction, power should be reserved to Her Majesty's Government to make grants "for the purposes of mines and fisheries, but with due regard to the immunities and trade of the Company." No "immunities" were even suggested with respect to the country which was to be withdrawn for colonization. He proposed to ignore the charter, by declaring that the jurisdiction of the Company "should rest henceforth upon the basis of statute." He quoted the Governor's letter above referred to, "as an expression of the willingness of the Company to accept in principle the arrangement" he proposed, and ended with the suggestion that, "as the Company had tendered concessions which may prove sufficient to meet the case," no decision seemed necessary as to the question of raising a "judicial issue with the view of ascertaining the legal rights of the Company." The propositions of Mr. Gladstone were only lost in the Committee by the casting vote of the Chairman.

Twelve years have passed since these offers were made by the Company and accepted by a Committee of Parliament. Every Colonial Secretary, from 1858 to the present moment, has attempted to carry out the recommendation of the Committee, with the assent of the Company, but without success. Two Acts of the Imperial Parliament have been passed, with provisions to facilitate the arrangement, but are yet without fruit. Sir Edward Bulwer (Lord Lytton) characterized the offers of the Company during his administration as "illusory," and declared that they "by no means met the exigencies of the case." He expressed his regret at a determination on their part which retains the very difficulty in the way of speedy and amicable settlement which he had sought to remove, and stated that if Canada declined to resort to "legal proceedings (which he had recommended) it would be his duty to consider whether negotiations with the Company can be resumed, or whether, in the last resort, Her Majesty's Government must take the matter into their own hands and proceed on their own account." (Mr. Merivale's letter to H. H.



Berens, 9th March, 1859). Sir Edward remained in office long enough to put an end to the Company's license of exclusive trade in British Columbia and the Indian Territories, but not long enough to carry out his policy of "connecting the two sides of British North America without the obstacle interposed by a proprietary jurisdiction between them."

The Duke of Newcastle opened negotiations with the Company in 1863-4 with much vigor. But after various proposals and counter-proposals, including the "reconstruction" of the Company, he was obliged to treat their propositions as "inadmissible."

Mr. Cardwell, during his administration, could not accept their proposals "with out considerable modifications."

The Duke of Buckingham, after many discussions with the representatives of the Company, regretted to perceive that their proposals "did not afford much prospect of an arrangement being come to;" and in the communication to which the letter of Sir Stafford Northcote is a reply, declared himself "unable to recommend the adoption" of the terms demanded by the Company.

Our notice of what, in Sir Stafford Northcote's opinion, constitutes a "cheerful" acceptance of the decision of Her Majesty's Government, would be in complete, if we did not remind Earl Granville that the Company's "proper conditions" for the surrender of that portion of the North-Western Territories, for which they can show no title but such as may be derived from the possession of a few trading posts, established there within the last fifty years, rose from a question of "no importance at all," in 1857, or at most, of "less money than would be spent in a litigation on the subject," (House of Commons Report; question 5,834), to the retention, in 1863, in fee-simple, of *half* the land proposed to be surrendered, with various other conditions, including the guarantee by the Governments of Canada and British Columbia, of an annual profit on the Company's expenditures for improvements on their own property! In 1864, these conditions took the form of a demand, first, to be paid £1,000,000 sterling, from sales of lands and mines, with large reservations "to be selected by them," &c.; and, secondly, to be paid £1,000,000 sterling, in cash, with other terms and reservations favorable to the Company.

In 1858, these conditions for the surrender of territorial and governing rights over the *whole* territory, remained at £1,000,000, as in the first proposition of 1864, with large reservations of land at "selected" points, especially exempted from taxation, and with full liberty to carry on their trade free from the export and import duties, to which all other subjects of Her Majesty in that country would be exposed.

In 1869, these various proposals, which no Secretary of State could possibly entertain, have all been apparently merged in one grand proposition to sell out "the territory at once for a sum of money," in cash or bonds, the amount of which is not stated.

We content ourselves under this head with the observation, that whatever others may be able to see in all these transactions, we are utterly unable to discover either a cheerful acceptance of the decision of any Government, or an honest disposition to fulfil the solemn pledges made to Parliament in 1857, on the faith of which the Company was unquestionably saved from judicial or legislative extinction.

Sir Stafford Northcote claims credit for the Company because they have "declined to encourage overtures which have been made to them by private persons for the purchase of portions of the Company's territory with a view to their colonization." Our information is (and we can give Earl Granville names and dates, if the point is deemed of any importance) that the only "overtures" of the kind mentioned which the Company have received, were not merely "encouraged," but suggested and concocted by prominent members of the Company, for the purpose of producing an impression on the Government, and with a view, not to colonization, but to *negotiation* and the stock market.

We are not sure that we understand the statement of Sir Stafford Northcote that the Company "have taken no step which would give rise to fresh complications or place any new difficulty in the way of the admission of their territory into the

"Confederation." The sale of land to private parties for colonization (assuming that *bona fide* offers have been received from such parties) could not give rise to much complication, except in the affairs of the Company. If Sir Stafford hints at the negotiations which were lately reported to be going on with certain American speculators in London for denationalizing and Americanizing the Company with a view to the "admission of their territory" into the United States, instead of the Confederation, we respectfully submit that while such a difficulty might indeed be "new," the proper person to solve it would be Her Majesty's Attorney-General, with the aid of a court and jury of competent jurisdiction.

We do not understand that Earl Granville expects us to defend in detail the Duke of Buckingham's proposals, or to answer all the objections made to them by Sir Stafford Northcote. The Government of Canada, as we have already reminded His Lordship, neither suggested the Act of Parliament nor the terms of the negotiation, which the late Secretary of State for the Colonies attempted to carry out under its authority. The Canadian plan of dealing with the question of the North-Western Territory and Rupert's Land, is set forth in the Address of the Canadian Parliament to Her Most Gracious Majesty, and we do not feel at liberty, as representatives, to suggest any other mode, until we are informed by Her Majesty's Government that the one proposed is deemed impracticable.

Sir Stafford Northcote's suggestion that "the payment of a sum of money" for the purchase of the territory, would conduce to a more satisfactory result, is, we believe, the point upon which Earl Grenville specially desires to have our views. Assuming that by "territory," he means the *whole* territory to which the Company lay claim, and that they are to continue as a trading corporation, retaining their posts, and allotments of land in their neighborhood, as he states, was agreed upon by the Duke of Buckingham and Lord Kimberly, we have to observe:

1. This proposition involves an abandonment of the *principle* which two Secretaries of State (and it must be presumed, two successive administrations) declared, after much consideration, and in view of the transactions of 1857, was properly and justly applicable to this case, viz.: That the compensation should be derived from the future revenue of the territory itself, and payable only as it came into the hands of Government. This *principle* was also accepted by the Company in their communication of 13th April, 1864.

2. On the other hand, the principle of ascertaining and fixing a money value upon the territorial rights of the Company "in the British territory east of the Rocky Mountains, and north of the American and Canadian lines," and of extinguishing those rights by a payment "at once," was suggested in 1865, by a delegation from the Canadian Government of that day, and assented to by Mr. Cardwell, then Secretary of State for the Colonies, and his colleagues.

If the latter principle and mode of settlement is now to be adopted, it is obvious that the first question is—What is the nature of these "rights," and what territories do they affect? and the second, what are the rights, separated from the duties and burdens attached to them by the charter, fairly worth?

We shall not attempt to answer these questions fully in the present communication, but we venture to submit for Earl Granville's consideration a few facts and inferences which cannot, we believe, be disputed; and which are essential elements in any calculation which may be attempted on the basis of a money purchase.

1. The Charter of Charles II. (and for the present we raise no question as to its validity), could not and did not grant to the Hudson Bay Company, any territory in America which was not then (1670) subject to the Crown of England.

2. The charter expressly excluded all lands, etc., then "possessed by the subjects of any other Christian Prince or State."

3. By the Treaty of St. Germain-en-Laye (1632), the King of England resigned to the King of France, the Sovereignty of Acadia, New France, and Canada generally, and without limits.

4. "La Nouvelle France" was then understood to include the whole region of Hudson Bay, as the maps and histories of the time, English and French, abundantly prove.



5. At the Treaty of Ryswick (1697), twenty-seven years after the date of the charter, the right of the French to "places situated in the Hudson Bay," was distinctly admitted; and although commissioners were appointed (but never came to an agreement), to "examine and determine the pretensions which either of the said Kings hath to the places situate in the Hudson Bay," and with "authority for settling the limits and confines of the lands to be restored on either side;" the places taken from the English (*i.e.*, from the Hudson Bay Company), by the French previous to the war, and "retaken by the English during this war, shall be left to the French by virtue of the foregoing (the 7th) article." In other words, the forts and factories of the Hudson Bay Company, established in Hudson Bay under pretence of their charter, and taken possession of by the French in time of peace, on the ground that they were an invasion of French territory, were restored by the Treaty of Ryswick, to the French, and not to the Company.

6. By the Treaty of Utrecht, 1714, "the Bay and Straits of Hudson, together with all lands, seas, sea coasts, rivers, and places situate in the *Bay and Straits*, and which belong thereto," were finally ceded to Great Britain.

7. As no definite boundary was ever established between the possessions of the French in the interior and the English at Hudson Bay, down to the Treaty of Paris, 1763, when the whole of Canada was ceded to Great Britain, the extent of the actual possession by the two nations for some period, say from the Treaty of Utrecht to the Treaty of Paris, affords the only rational and true basis for ascertaining that boundary.

8. The evidence is abundant and conclusive to prove that the French traded over and possessed the whole of the country known as the Winnipeg Basin and "Fertile Belt," from its discovery by Europeans down to the Treaty of Paris, and that the Hudson Bay Company neither traded nor established posts to the south or west of Lake Winnipeg, until many years after the cession of Canada to England.

9. No other or subsequent grant to the Company was ever made which could possibly extend their territorial rights under their charter. The license to trade in the Indian territories, which they obtained in 1821, was revoked in 1858, and has not been renewed.

10. The country which, in view of these facts, must be excluded from the operation of the charter, includes all the lands fit for cultivation and settlement in that part of British America.

It will be for Earl Granville to consider whether this Company is entitled to demand any payment whatever for surrendering to the Crown that which already belongs to it. We confess our utter inability, upon any principle of law, or justice, or public policy, with which we are acquainted, to estimate the amount which ought to be paid under such circumstances. The only basis of computation we can discover, applicable to such a case, is the *cost* of the legal proceedings, if any be necessary, to recover possession. A person has taken possession of a part of your domain under the pretence that it is included in a deed which you gave him for some adjoining property before you purchased the domain. You want to get rid of him but will be compelled to bring an action. He is artful, stubborn, wealthy and influential. He will be able to worry you with a tedious litigation. How many acres will you allow him to "reserve," and how much will you pay to save yourself the cost and trouble of a lawsuit? Compromises of this kind are not unknown in private life, and the motives and calculations which govern them may be applicable to the present case. We recommend this mode of computing the amount of the payment to be made for the surrender of the North-West Territory, as distinguished from Rupert's Land, with all the more confidence because it has already been suggested by one of the ablest and most trusted of the representatives of the Company. (Vide evidence of Right Honorable E. Ellice, House of Commons Report, 1857, question 5, 34.)

With respect to Rupert's Land, or the "lands and territories," "upon the coasts and confines of the seas, bays," &c., that lie "within the entrance of the straits commonly called Hudson Straits," "not possessed by the subjects of any other Christian Prince or State," a different rule, we admit, may be held to apply. Giving to the words of the grant the widest construction, territorially, that could possibly be

admitted by any judicial body with the facts of the case in evidence before it, or giving to these words the construction which the Company themselves applied for a hundred years from the date of their charter, the "rights" they propose to sell are of little commercial value. No revenue, we feel assured, will ever be derived from them. The fur trade is the only industry the country offers as a source of profit, and this, if we rightly understand Sir Stafford Northcote's suggestion, the Company wish to retain.

It has never been alleged, even by the most sanguine advocates of the new theory of the Company respecting land-sales, that any revenue can be derived from that source within the limits which we have assigned to Rupert's Land. The cost of Government there, inconsiderable though it may be, will always exceed any possible revenue. We are thus led to the same conclusion as in the case of the territory claimed, but not owned by the Company, viz., that what they propose to sell has no pecuniary or commercial value. They are there, however, by at least a show of right. Being there, they obstruct the progress of Imperial and Colonial policy, and put in jeopardy the sovereign rights of the Crown over one-third (and as some think, even a larger portion) of the North American Continent. "What is it worth to have this obstruction *quietly* removed?" This is perhaps the true question; but the answer, we submit, belongs rather to Her Majesty's Government—which has the power, in the event of resistance, to remove the evil by a summary process—than to those who are little more than spectators of the negotiation.

Earl Granville is aware that several attempts have been made since 1857 to arrive at a definite agreement on the subject of compensation. The suggestions and proposals on each side, together with the actual market value of the Company's stock at different periods, supply data which His Lordship may deem of importance; and we, therefore, respectfully submit our views as to the conclusions which may be deduced from them.

The first attempt of the Imperial Government to estimate, and express in pounds sterling, the compensation which it would be reasonable to offer to the Company, was made by the Duke of Newcastle in 1864. The greatest sum which, after "very grave consideration," his Grace felt himself able to propose for the surrender of the country west of Lake Winnipeg was £250,000. But the payment was subject to the following conditions:—

1. £150,000 was to be derived from the sale of lands by Government within the territory. The payment was to be made at the rate of ls. per acre sold, but to be entirely dependent on the Government's receipts.

2. Payments were to cease whenever they reached £150,000; and absolutely at the end of fifty years.

3. The Company was to be paid one-fourth of the sum received by Government for export duty on gold or for mining licenses or leases for gold mining in the territory, for fifty years, or until the aggregate amounted to £100,000.

4. The payment of any part of the £250,000 was contingent on the ability of the Company to place Her Majesty's Government in possession of an "indisputable title" to the territory ceded by them as against the claims of Canada.

The last condition was objected to by the Company, on the ground that they could only give such title as they had, which they contended "must be taken for better or for worse." The Duke of Newcastle renewed his offer, modifying the last condition into a stipulation that, in case it should be found advisable, the territory eastward of a line passing through Lake Winnipeg and Lake of the Woods might be ceded or annexed to Canada, in which case nothing would be payable to the Company in respect to that territory.

The present value in cash of such an offer, subject to the conditions and contingencies specified, would be very difficult to ascertain. The revenue from export duty on gold, and for licenses would probably be *nil*. The revenue from land sales, if the costs, surveys, management, and necessary roads were deducted, would be *nil* also. It is very doubtful whether, if these deductions be made, the revenue from land sales in the Provinces of Canada, from the cession, in 1763, to the present time, would show a surplus.



Sir Stafford Northcote, quotes the price of land in Minnesota, and thence infers the value of lands in the Red River and Saskatchewan districts, which lie from five to ten degrees further north, and are still in possession of the wild Indians of the plain. But we think it will be found that the lands in Minnesota, which sell for "one pound per acre," are either private lands in the neighborhood of towns, or the property of railway companies, on or near which millions of dollars have been expended to make them saleable. They are certainly not public lands unimproved by public expenditure. Sir Stafford ought to have mentioned at the same time a fact which, we believe, is known to every emigrant who leaves the British Isles for America, that in the Western States of the Union, and in the Province of Canada, wild lands are now given to settlers as "free grants," and we may add, this policy is more likely to be extended than reversed. To talk of the value of public lands as a source of revenue, distant from one to two thousand miles from available markets, and without roads or navigable waters by which to approach them, is to contradict all experience, or to assume that the cost of surveys and management, and of canals, roads, or other improvements for their development and settlement, will be supplied by those who do not own them, for the benefit of those who do.

But in order to arrive at some result that can be expressed in figures, we will assume that the sum ascertained by the Duke of Newcastle to be a sufficient "compensation," would, under his proposition, have been paid within fifty years, and at an average rate per annum. We thus give the Company the benefit of all the doubts in the case, and reduce the question to a simple problem in arithmetic: What is the present value of an annuity of £5,000 per annum for fifty years?

That value, we submit, is the highest amount in cash which can be claimed as an equivalent for the offer made to the Company, in 1864, by his Grace the Duke of Newcastle.

The next offer of the Imperial Government which mentions a specific sum, is that made by his Grace the Duke of Buckingham and Chandos, on the 1st December last. It differs from the previous offer in several important particulars:

1. It embraces the whole of the territory claimed by the Company.
2. It proposes to allow the Company to retain their "posts" and certain allotments of lands in their vicinity, with a small reservation in each township as it is surveyed.
3. It purposes to allow the Company one-quarter of the receipts from land (free grants being treated as sales at 1s. per acre), and one quarter of the sum received by Government as an export duty for gold and silver.
4. It limits the amount to be received under these heads conjointly, at £1,000,000 sterling.

The other stipulations are unimportant for the purpose of ascertaining the cash equivalent of the proposition.

It is evident that the "unknown quantities" in this question are as difficult to find as in the first. We know the *total* sum to be paid, and the *proportion* of the receipts from lands and mines applicable for its payment; but we do not know the average annual sum likely to be realized from their sale. The minimum price is fixed at 1s. per acre, and it is doubtful if, under the proposed arrangement, the price would ever be found to exceed that sum. There is one term still to be ascertained—the average number of acres per annum likely to be sold and granted. A crude guess is all that the case admits of. If we take Upper Canada, possessing many advantages for early and rapid settlement, of which, unfortunately, the remote territories of the North-West are deprived, we find that from its erection into a separate Province, down to 1863, about 22 millions of acres had been disposed of by sale and grant, or an average of about 236,000 acres per annum.

Assuming that the said rate of sale, &c., is maintained in the North-West Territories (which all the old Hudson Bay authorities who know the country would pronounce a bold assumption), we have reduced the question to a simple reference to the annuity tables as before, viz: What is the present value of an annuity of £3,575 per annum for 250 years?

We have omitted from the last term the one-fourth of the Government receipts from gold and silver, for two reasons. 1st. It has not be shown that there are gold or silver mines in the territory that will pay for working. 2nd. All the attempts heretofore made to obtain a revenue from such sources in Canada have failed, and public opinion has forced the local Governments to adopt the policy of what may be called "free mining," or cheap lands for the miners, and abolition of royalties and imposts, except to meet the cost of preserving the peace, and of surveys and necessary supervision.

There is another proposition on the Government side, which bears on the question of "compensation." It results from the agreement between the representatives of the Government of Canada and Her Majesty's Government, in 1865, and, containing fewer elements of uncertainty than propositions which involve questions of Government policy, emigration, land sales, &c., it can be reduced to a cash value with greater exactitude.

Mr. Cardwell describes the agreement as follows:—"On the fourth point, the subject of the North-Western Territory, the Canadian Ministers desired that that territory should be made over to Canada, and undertook to negotiate with the Hudson Bay Company for the termination of their rights on condition that the indemnity, if any, should be paid by a loan to be raised by Canada under the Imperial guarantee. With the sanction of the Cabinet, we assented to this proposal—undertaking, that if the negotiations should be successful, we, on the part of the Crown, being satisfied that the amount of the indemnity was reasonable, and the security sufficient, would apply to the Imperial Parliament to sanction the agreement, and to guarantee the amount."

The Canadian delegates reported on the subject with a little more detail:—"We accordingly proposed to the Imperial Ministers that the whole British territory east of the Rocky Mountains, and north of the American or Canadian lines, should be made over to Canada, subject to such rights as the Hudson Bay Company might be able to establish, and that the compensation to that Company (if any were found to due) should be met by a loan guaranteed by Great Britain. The Imperial Government consented to this, and a careful investigation satisfies us that the compensation to the Hudson Bay Company cannot, under any circumstances, be onerous. It is but two years since the present Hudson Bay Company purchased the entire property of the old Company; they paid £1,500,000 for the entire property and assets, in which were included a large sum of cash on hand, large landed properties in British Columbia and elsewhere, not included in our arrangement, a very large claim against the United States Government, under the Oregon Treaty; and ships, goods, pelts and business premises in England and Canada, valued at £1,023,569. The value of the territorial rights of the Company, therefore, in the estimation of the Company itself, will be easily arrived at."

The principle which this agreement between the two Governments recognises as applicable to the case, appears to be—compensation in money for the ascertained rights of the Company, after deducting the value of the property detained by them. The words "if any," and "if any were found to be due," import that, in the opinion of both parties, it was possible, if not probable, that after making the deductions, no compensation would be "due."

The basis of the calculation which seems to have been made, or agreed upon, is very simple. The old Hudson Bay Company had recently sold all the rights and property of the Company of every description for the sum of £1,500,000. An inventory agreed to by both sellers and purchases, set down the assets, exclusive of "territorial rights," as follows:—

- |  |            |
|--|------------|
| "1. The assets (exclusive of Nos. 2 and 3) of the Hudson Bay Company, recently and specially valued by competent valuers ..... | £1,023,569 |
| "2. The landed territory (not valued).   |            |
| "3. A cash balance of.....   | 370,000    |

"£1,393,569"



On the face of their own statement, £1,500,000 less the above sum, or £106,431, was the amount which the new purchasers actually paid for the "Landed Territory." Under the agreement of 1865, this seems to be the highest sum which Mr. Cardwell and the representatives of the Canadian Government thought could in any event be demanded by the Company as indemnity or compensation for the surrender of the rights they "would be able to establish."

We have thus attempted to convert into their equivalents in cash, the two offers made to the Company since 1857 by the Imperial Government, and to ascertain the amount of the indemnity contemplated by Mr. Cardwell and the Canadian delegates in the arrangements of 1865. To arrive at any result, we have had to assume figures which, according to our experience, the facts of a new country will be more likely to reduce than to increase. We have also omitted conditions either implied or expressed in the proposals of 1864 and 1868, which, we believe, would have imposed considerable expense upon the Company.

There is another mode of estimating the amount to be paid, on the principle of compensating for actual loss only, which remains to be considered.

The stock of the Company has for some time been quoted at an average of 13½. The capital is, nominally, £2,000,000, and the shares £20—the value of the stock, therefore, in cash, assuming that the whole of it could be sold at the market rate, is £1,350,000, or £43,569 less than the value, according to their own estimate, in 1863, of the Company's assets, *exclusive* of the "landed territory." The money obtained from the public for shares, beyond the £1,500,000 paid to the old shareholders, will no doubt be amply sufficient to make good any deficiency in the valuation of 1863.

From a consideration of these data, we submit that, if the validity of the charter is not now to be questioned; if the territorial extent of the country affected by it is not to be defined; if the claim of Canada to include within her boundaries a large portion, if not the whole, of the country occupied by the French at the time of the cession, in 1763, is not to be investigated, and finally determined; if the admitted incapacity and the notorious neglect of the Company to perform the duties of government (which were part of the consideration for the *rights* conceded by the charter), are not to be taken as sufficient on public grounds to justify cancellation, and re-entry by the Crown—then the very highest indemnity which ought to be paid, in cash, for a surrender of the territorial claims of the Company, with the reservations and other privileges offered by His Grace the Duke of Buckingham and Chandos, is the sum indicated by the foregoing computations.

We must, in conclusion, express to Earl Granville our strong conviction that no *money* offer, which either the Imperial or the Canadian Government would deem reasonable, will be accepted by the Company, and that to delay the organization of constitutional government in the North-West Territory until the Hudson Bay Company consent to reasonable terms of surrender, is to hinder the success of Confederation in British America, and to imperil the interests and authority of the British Crown in the territories now occupied by the Company.

We therefore respectfully submit for Earl Granville's consideration, whether it is not expedient that the Address of the Canadian Parliament be at once acted upon, under the authority of the Imperial Act of 1867.

But, if His Lordship should see any sufficient legal or other objection to that course, then we ask, on behalf of the Dominion Government, for the immediate transfer to that Government of the "North-West Territory," or all that part of British North America, from Canada on the east, to British Columbia, Alaska, and the Arctic Ocean, on the west and north, not hitherto validly granted to and now held by "The Governor and Company of Adventurers of England trading into Hudson Bay," by virtue of a charter of King Charles the Second, issued about the year 1670.

We have the honor to be, Sir, your obedient servants,

GEO. ET. CARTIER,  
WM. McDOUGALL.

Sir FREDERICK ROGERS, Bart., &c., Colonial Office.

## 22.—RETURN

To an Address to His Honor the Lieutenant-Governor of Ontario, praying His Honor to cause to be laid before the House, a Statement showing, in detail, the Expenditure each year since 1867 on account of the Settlement of the Northerly and Westerly Boundaries of the Province and the Arbitration in reference thereto; with the Names of the Persons, to whom and what account the payments were made, and the date of such payments.

By Command,

ARTHUR S. HARDY,  
*Secretary.*

Provincial Secretary's Office,  
Toronto, 14th February, 1879.

TORONTO, 13th February, 1879.

Statement showing the amounts paid on account of North-Western Boundary between 1867 and 1879.

	\$	cts.
1872—Hon. Wm. McDougall, services.....	907	00
Hon. D. Mills do .....	350	20
1873—Charles Lindsay do .....	600	00
Hon. D. Mills, expenses and services .....	1,060	00
Hunter, Rose & Co., printing.....	2,264	61
1874—Charles Lindsay, services.....	536	00
1875—Hon. D. Mills do .....	300	00
1876—do do .....	1,700	00
Thos. Bengough do .....	83	33
C. Panet do .....	10	00
I. P. Macdonald do .....	83	33
Hunter, Rose & Co., printing.....	455	23
Express Company's charges.....	4	60
Hon. O. Mowat, travelling expenses .....	60	00
1877—Hunter, Rose & Co., printing .....	419	58
Copp, Clark & Co., engraving maps.....	350	00
State Librarian, Albany, map.....	5	00
Express Company's charges.....	3	30
Dominion Telegraph Co., telegrams.....	18	00
I. P. Macdonald, services as Clerk and expenses...	909	00
T. Bengough do do .....	111	11
E. S. Thaynes, services .....	9	00
J. G. Smith do .....	4	00
L. J. Burpee do .....	3	00
T. C. Scoble, travelling expenses to London and Paris	600	00
1878—Welling & Williamson, stationery.....	6	75
T. C. Scoble, on account of services.....	771	17
C. E. Janrin, services.....	10	00
H. A. Semple do .....	3	73
Express Company's charges.....	11	95
I. P. Macdonald, services.....	390	00
Hunter, Rose & Co., printing.....	928	25
M. Donnelly, cab-hire.....	1	00
Telegraph Co., telegrams.....	1	10
G. Verral, cab-hire.....	3	50
Sir John Rose, advance to T. C. Scoble.....	585	28
A. H. Sydere, services.....	100	00
J. M. Delamere do .....	50	00



Statement showing the amounts paid on account of North-West Boundary  
between 1867 and 1879—*Concluded.*

	\$	cts.
1878—Ottawa <i>Free Press</i> , printing.....	98	55
Hon. S. C. Wood, to pay expenses <i>re</i> preparation of report on lands awarded Ontario.....	200	00
H. MacMahon, payment of Ontario share of short- hand writers' account.....	57	13
Hon. R. A. Harrison, services as Arbitrator.....	1,000	00
1879—Hon. O. Mowat, expenses of himself and clerk at Ottawa.....	56	90
Thos. Hodgins, travelling expenses as Counsel.....	31	00
	<b>\$15,152</b>	<b>65</b>

Certified, W. R. HARRIS,  
*Assistant-Treasurer.*

23.—AWARD OF THE ARBITRATORS.

To all to whom these presents shall come :

The undersigned having been appointed by the Governments of Canada and Ontario as Arbitrators to Determine the Northerly and Westerly Boundaries of the Province of Ontario, do hereby Determine and Decide the following are and shall be such Boundaries; that is to say :—

Commencing at a point on the southern shore of Hudson Bay, commonly called James' Bay, where a line produced due north from the head of Lake Temiscaming, would strike the said south shore; thence along the said south shore westerly to the mouth of the Albany River; thence up the middle of the said Albany River, and of the lakes thereon, to the source of the said river at the head of Lake St. Joseph; thence by the nearest line to the easterly end of Lac Seul, being the head waters of the English River; thence westerly through the middle of Lac Seul and the said English River to a point where the same will be intersected by a true meridional line drawn northerly from the International Monument placed to mark the most north-westerly angle of the Lake of the Woods by the recent Boundary Commission; and thence due south, following the said meridional line to the said International Monument; thence southerly and easterly, following upon the International Boundary Line, between the British Possessions and the United States of America, into Lake Superior.

But if a true meridional line drawn northerly from the said International Boundary at the said most north-westerly angle of the Lake of the Woods, shall be found to pass to the west of where the English River empties into the Winnipeg River, then, and in such case, the northerly boundary of Ontario shall continue down the middle of the said English River to where the same empties into the Winnipeg River, and shall continue thence on a line drawn due west from the confluence of the said English River with the said Winnipeg River, until the same will intersect the meridian above described, and thence due south, following the said meridional line to the said International Monument; thence southerly and easterly, following upon the International Boundary Line, between the British Possessions and the United States of America, into Lake Superior.

Given under our hands, at Ottawa, in the Province of Ontario, this Third day of August, Eighteen Hundred and Seventy-eight.

(Signed) ROBT. A. HARRISON.  
EDWD. THORNTON,  
F. HINCKS.

Signed and published in the presence of  
(Signed) E. C. MONK,  
THOMAS HODGINS,











